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ARKANSAS CODE OF 1987 ANNOTATED

VOLUME 11B

1998 Replacement

TITLE 14: LOCAL GOVERNMENT (CHAPTERS 183-295)

Prepared by the Editorial Staff of the Publisher

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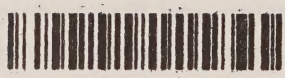

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Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 1997 Regular Session. Annotations are to the following sources:

Arkansas Advance Reports through 330 Ark. 497 and 59 Ark. App. 162.

Federal Supplement through Volume 974, p. 790.

Federal Reporter 3rd Series through Volume 124, p. 1482.

United States Supreme Court Reports, Lawyers' Edition, 2nd Series through Volume 138, p. 1034.

Bankruptcy Reporter through Volume 213, p. 49.

Arkansas Law Notes through the 1997 Edition.

Arkansas Law Review through Volume 49, p. 670.

University of Arkansas at Little Rock Law Journal through Volume 19, p. 540.

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8. Environmental Law
9. Family Law
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User's Guide

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of Volume 1 of the Code.

TITLE 14

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CHAPTER 184

CENTRAL BUSINESS IMPROVEMENT DISTRICTS

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RESEARCH REFERENCES

ALR. Eminent domain: industrial park or similar development as public use justifying condemnation of private property. 62 ALR 4th 1183.

CASE NOTES

In General.

Improvement districts are agents of the state and derive their limited powers and duties of a public and governmental nature by legislative delegation through the taxing power of the state, and constitute a separate and distinct species of taxing districts as contradistinguished from counties, municipal corporations and school districts. Quapaw Cent. Bus. Imp. Dist. v. Bond-Kinman, Inc., 315 Ark. 703, 870 S.W.2d 390 (1994).

Subchapter 1 — General Provisions

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14-184-130. Dissolution of district.

Effective Dates. Acts 1973, No. 162, § 27: Feb. 20, 1973. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that the deterioration of the central business districts of some cities and towns of the State is a threat to the property tax and revenue sources of such municipalities, and that elimination of urban blight and decay and the modernization and the general improvement of such central business districts are urgent. Therefore, an emergency is declared to exist, and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1975, No. 402, § 7: Mar. 14, 1975. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that the deterioration of the central business districts of some cities of the State is a threat to the property tax and revenue sources of such municipalities, that the elimination of urban blight and decay and the modernization and general improvements of such business districts are urgent, and that amendments to the Central Business District Improvement Act are

necessary to enable said Act to be of immediate benefit. Therefore, an emergency is hereby declared to exist, and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1975, No. 1009, § 2: Apr. 22, 1975. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that the deterioration of the central business districts of some municipalities of the State is a threat to the property tax and revenue sources of such municipalities, and that the elimination of urban blight and decay and the modernization and the general improvement of such central business districts are urgent. The General Assembly further finds that existing legislation is not broad enough to cover a sufficient number of municipalities and that passage of this bill is necessary to accomplish such broader coverage. Therefore, an emergency is declared to exist, and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1997, No. 933, § 5: Mar. 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws relating to central business improvement districts are unduly restrictive with respect to the manner in which general obligation assessment bonds of the districts are required to be sold; that central business improvement districts are now severely hampered in their ability to issue bonds to acquire and improve property in the boundaries of the district and to refund outstanding general obligation assessment bonds of the district; that this act will facilitate the issuance of such bonds and will thereby enable the districts to be more effective in eliminating urban blight and decay; and that this act should be given effect immediately to help solve the aforementioned problems. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

14-184-101. Title.

This subchapter may be referred to and cited as the "Central Business Improvement District Act."

History. Acts 1973, No. 162, § 1; A.S.A. 1947, § 20-1601.

14-184-102. Purpose.

This subchapter shall be construed as cumulative of existing laws relating to the creation, operation, and existence of municipal improvement districts and shall not repeal any existing law unless the law is in direct conflict with this subchapter. It is the intent of this subchapter to provide additional authority to municipalities for creation of improvement districts and to authorize and enumerate additional powers for these districts.

History. Acts 1973, No. 162, § 24; A.S.A. 1947, § 20-1623.

14-184-103. Legislative determinations.

It is determined and declared by the General Assembly that:

(1) The deterioration of the central business districts of urban centers of the state by reason of obsolescence, overcrowding, faulty arrangement or design, deleterious land use, or a combination of these or other factors is a threat to the property tax and other revenue sources of municipalities;

(2) Increases in population and automobile usage have created conditions of traffic congestion in central business districts, and such conditions constitute a hazard to the safety of pedestrians and impede the use of public rights-of-way;

(3) The elimination of urban blight and decay and the modernization and general improvement of central business districts by governmental action are considered necessary to promote the public health, safety, and welfare of the communities; and

(4) The restoration of central business districts is the appropriate subject for remedial legislation.

History. Acts 1973, No. 162, § 2; A.S.A. 1947, § 20-1601n.

14-184-104. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Acquire" means obtain property rights by gift, purchase, devise, bequest, eminent domain, lease, sublease, assignment of lease, or any combination or variant of these means;

(2) "Assessed value" means value as assessed for ad valorem property tax purposes;

(3) "Board" means the board of commissioners appointed;

(4) "District" means the central business improvement district created by ordinance of the municipality;

(5) "Governing body" means the city council, board of directors, commission, or other municipal body exercising general legislative power in the municipality;

(6) "Municipality" means any city having the population required by § 14-184-107;

(7) "Owner" means record owner in fee simple;

(8) "Plan or plan of improvement" means the general design plan, including any amendments to it that may be made from time to time of the proposed improvements in the district.

History. Acts 1973, No. 162, § 3; 1975, No. 402, § 1; A.S.A. 1947, § 20-1602.

14-184-105. Construction.

(a) This subchapter shall be construed liberally.

(b) The enumeration of any object, purpose, power, manner, method, and thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, and things.

History. Acts 1973, No. 162, § 25; A.S.A. 1947, § 20-1624.

14-184-106. Other laws applicable.

Except as otherwise provided in this subchapter, the provisions of Acts 1881, No. 84; Acts 1899, No. 183; and all other laws of the State of Arkansas pertaining to municipal improvement districts, in general, as they may be amended from time to time, shall be applicable to a central business improvement district and shall govern the procedures for the operation of a district's affairs including, without limitation:

(1) Giving of any notice;

(2) Appointment of assessors;

(3) Making and filing of assessments of benefits or reassessments of benefits;

(4) Annexation of additional territory to a district;

(5) Collection of assessments;

(6) Enforcement of delinquent assessments; and

(7) All other matters relating to the internal operation of a district.

History. Acts 1973, No. 162, § 5; A.S.A. 1947, § 20-1604.

Publisher's Notes. Acts 1881, No. 84, referred to in this section, is codified as §§ 14-88-101, 14-88-202, 14-88-204, 14-88-302, 14-88-303, 14-88-305 — 14-88-308, 14-88-311, 14-88-403, 14-88-502, 14-89-201, 14-89-1001, 14-89-1002, 14-90-101, 14-90-201, 14-90-302, 14-90-403, 14-90-701, 14-90-801 — 14-90-805, 14-90-902, 14-90-903, 14-90-916, 14-90-1001 — 14-90-1003, 14-90-1005, 14-90-1006, 14-90-1101 — 14-90-1106, 14-90-1108, 14-90-1201 — 14-90-1204, 14-90-1302, 14-90-1303, 14-91-101, 14-90-104 — 14-91-107, 14-91-201, and 14-235-301 — 14-235-305.

Acts 1899, No. 183 referred to in this section is codified as §§ 14-90-201 — 14-90-203, 14-90-401, 14-90-402, 14-90-501, 14-90-502, 14-90-601, 14-90-603, and 14-90-801 — 14-90-805.

14-184-107. Authority to create districts.

The governing body of any first-class or second-class municipality of the state is authorized to create, by ordinance, one (1) or more central business improvement districts in the manner and for the purposes provided in this subchapter.

History. Acts 1973, No. 162, § 4; 1975, No. 402, § 2; 1975, No. 1009, § 1; 1977, No. 530, § 1; 1981, No. 3, § 1; A.S.A. 1947, § 20-1603.

14-184-108. Petition for organization — Notice and hearing.

(a)(1)(A) When persons claiming to be owners of two thirds (⅔) in assessed value, as shown by the last county assessment, of real property in the area proposed to comprise a central business improvement district, file with the city clerk a petition for the organization of a district for the purposes provided in this subchapter, it shall be the duty of the clerk to give notice that the petition will be heard at a meeting of the governing body named in the notice, which will be held more than fifteen (15) days after the filing of the petition.

(B) Notice shall be published once a week for two (2) weeks, the last insertion to be not less than seven (7) days before the date fixed for the hearing.

(2)(A) The mayor, if he sees fit, may call a special meeting of the governing body for the purpose of hearing the petition.

(B) This called meeting shall be held not less than fifteen (15) days after the date of the call, and notice of the hearing shall be published for the time and in the manner stated in this subsection.

(3) The notice may be in the following form:

"All owners of real property within the following described territory ..... (here describe the territory to be included in the District) in the City of ....., are hereby notified that a petition has been filed with the City Clerk of the City of ..... purporting to be signed by a two-thirds (⅔) in assessed value of the owners of real property within the territory, which petition prays that a Central Business Improvement District be formed embracing territory for the purpose of ..... (here describe purpose and nature of improvements in general terms), and that the cost thereof be assessed and charged upon the real property above described. All owners of real property within the territory are advised that said petition will be heard at the meeting of the City Council to be held at the hour of ....., ... M. on the ....day of ....., 19...., and that at the meeting the Council will determine whether those signing the petition constitute two-thirds (⅔) in value of the owners of real property; and at the meeting all owners of real property within the territory who desire will be heard upon the question.

.....

City Clerk"

(b)(1) This petition may limit the cost of the improvement either to a fixed sum or to a percentage of the assessed value of the real property in the district.

(2) The petition may also set forth the names of the persons whom the petitioners request be named as members of the board of commissioners of the district.

History. Acts 1973, No. 162, § 6; A.S.A. 1947, § 20-1605.

Cross References. Notice on formation of improvement districts, § 14-86-301 et seq.

CASE NOTES

Signature by Owner.

This section requires that the owner's name be signed to the petition. The owner's name can be signed by an agent, but only when the agent signs as an agent and the name of the owner is disclosed. Hood v. Central Bus. Imp. Dist. No. 1, 301 Ark. 35, 781 S.W.2d 35 (1989).

Where the name of the owner is not signed to the petition in any manner, the assessed value of his land cannot be counted as part of the petition. Hood v. Central Bus. Imp. Dist. No. 1, 301 Ark. 35, 781 S.W.2d 35 (1989).

14-184-109. Rules governing petitions.

(a) After the filing of a petition for the creation of a central business improvement district, no petitioner shall be permitted to withdraw his name from it.

(b) No petition with the requisite signatures shall be declared void on account of formal or insubstantial defects.

(c) The governing body, at any time, may permit the petition to be amended to conform to the facts by correcting any errors in the description of the territory or in any other particular.

(d) Similar petitions for the organization of the same district may be filed and together shall be regarded as one petition with the original.

(e) All petitions filed prior to the hearing on the first petition filed shall be considered by the governing body in the same manner as if filed with the first petition placed on file.

History. Acts 1973, No. 162, § 7; A.S.A. 1947, § 20-1606.

14-184-110. Organizational expenses.

A central business improvement district organized under this subchapter is authorized to pay reasonable compensation to those persons who have done necessary or desirable preliminary work in the organization of it, including the fees of abstractors and title companies, engineers, architects, and attorneys.

History. Acts 1973, No. 162, § 10; A.S.A. 1947, § 20-1609.

14-184-111. Board of commissioners.

(a)(1)(A) In the ordinance creating a central business improvement district, the governing body shall appoint five (5) persons who shall be owners of real property in the district, or officers or stockholders of a corporation owning real property within the district, as commissioners, who shall compose a board of commissioners for the district.

(B) In cities operating under a commission form of government, the mayor and city commissioners, by virtue of their offices, shall be commissioners of each district and shall comprise the board of each district.

(2) The board of commissioners shall elect a chairman and a secretary.

(b)(1)(A) All vacancies that may occur after the board shall have been organized shall be filled by the governing body.

(B) If all places on the board shall become vacant, or those appointed shall refuse or neglect to act or shall cease to have the qualifications required for their original appointment, new members shall be appointed by the governing body as in the first instance.

(2)(A)(i) The governing body shall have the power to remove the board, or any member of it, by a two-thirds (⅔) vote of the whole number of the members of the governing body.

(ii) Removal shall be for cause only and after a hearing upon sworn charges preferred in writing by a property owner in the district. Ten (10) days' notice of the hearing on the charges shall be given.

(B) The governing body shall have the power to remove the board, or any member of it, by a vote of the majority of the whole number of the members elected to the governing body upon the written petition of the owners of a majority in assessed value of the property located within the district, after a hearing upon ten (10) days' notice to each member of the board affected.

(c) The members of the board shall receive no compensation for their services but may be reimbursed for their actual expenses incurred in the performance of their duties.

History. Acts 1973, No. 162, §§ 8, 11; A.S.A. 1947, §§ 20-1607, 20-1610.

14-184-112. Plans and estimated cost of improvement.

(a)(1) As soon as is practicable after the qualification of its members, the board of commissioners for a central business improvement district shall form plans for the improvement as described in the petition and shall obtain estimates of the cost of it.

(2) Prior to the filing of any assessment of benefits to accomplish the plan of improvement, a copy of the plans and the estimated cost for the accomplishment of the plans shall be filed in the office of the city clerk.

(b) The plan may provide for the construction of improvements, and other implementation of the plan, in such sequence and in such parts as the board shall determine from time to time to be most advantageous to the district.

(c)(1) The plan of improvement may be amended at any time by the board in order to include or delete such features as the board shall determine to be in the best interests of the district.

(2)(A) A copy of the plan, as amended, shall be filed in the office of the city clerk, and, if the original assessment of benefits shall not have yet been filed, no further notice shall be necessary.

(B)(i) If the assessment of benefits for the district shall have been filed and a levy of it enacted by ordinance, the board shall examine

the amended plan and determine whether or not a reassessment of benefits shall be desirable.

(ii) If the board shall determine that a reassessment is desirable, the board shall direct that a reassessment be prepared and filed as in the case of any other reassessment. However, if the amended plan shall provide for the construction of additional improvements the costs of which are to be financed primarily from the issuance of bonds to be retired from the revenues from the additional improvements or from other sources, it shall not be necessary to reassess benefits.

History. Acts 1973, No. 162, § 12; 1975, No. 402, § 4; A.S.A. 1947, § 20-1611.

14-184-113. Expenditures for services.

(a)(1) In the preparation of the plan of improvement, a central business improvement district is authorized to employ architects and engineers to prepare plans, specifications, and estimates of cost for the construction of the improvements and to supervise and inspect the construction.

(2) In addition, the district is authorized to engage and pay attorneys, accountants, and consultants and to obtain and pay for such other professional and technical services as it shall determine to be necessary or desirable in assisting it to effectively carry out the functions, powers, and duties conferred and imposed upon it to accomplish and maintain the proposed improvement.

(3) The district is further authorized to employ, on a full-time basis, such persons as shall be necessary to maintain, operate, supervise, repair, administer, or otherwise render assistance in the effecting of the plan and its continued benefit.

(b) All expenditures under this section shall be taken as a cost of the improvement.

History. Acts 1973, No. 162, § 13; A.S.A. 1947, § 20-1612.

14-184-114. Abandonment of improvement.

(a)(1) If for any cause the improvement shall not be made, the cost shall be a charge upon the real property in the central business improvement district and shall be raised and paid by an assessment upon the real property in the district as assessed for state and county purposes.

(2) The assessment shall be levied by the governing body on the application of any person interested and shall be paid to the district to be distributed among the creditors of the district.

(b) When any improvement is abandoned, it is made the duty of the board of commissioners to report to the governing body the total

amount of the debts which it has incurred, to the end that the governing body may make adequate provision for their payment.

History. Acts 1973, No. 162, § 13; A.S.A. 1947, § 20-1612.

14-184-115. Powers of improvement district generally.

A central business improvement district shall have all powers necessary or desirable to undertake and carry out any or all parts of the planned improvement including, but not limited to, the following:

(1) Existence as a body corporate, having the power to sue and to be sued and to contract in its name;

(2) To own, acquire, improve, operate, maintain, sell, lease as lessor or lessee, and contract concerning, or otherwise deal in or dispose of, any and all real and personal property necessary or desirable for the accomplishment of the plan;

(3)(A) To acquire, construct, install, operate, maintain, and contract regarding pedestrian or shopping malls, plazas, sidewalks or moving sidewalks, parks, parking lots, parking garages, offices, urban residential facilities including, without limitation, apartments, condominiums, hotels, motels, convention halls, rooms, and related facilities, and buildings and structures to contain any of these facilities, bus stop shelters, decorative lighting, benches or other seating furniture, sculptures, telephone booths, traffic signs, fire hydrants, kiosks, trash receptacles, marquees, awnings or canopies, walls and barriers, paintings or murals, alleys, shelters, display cases, fountains, child-care facilities, restrooms, information booths, aquariums or aviaries, tunnels and ramps, pedestrian and vehicular overpasses and underpasses;

(B) To acquire airspace for, and to construct, pedestrian walkways through buildings; and

(C) To construct each and every other useful, necessary, or desired facility or improvement which may secure and develop industry and be conducive to improved economic activity within the district.

(4) To landscape and plant trees, bushes and shrubbery, grass, flowers, and each and every other kind of decorative planting;

(5) To install and operate, or to lease, public music and news facilities;

(6) To acquire and operate buses, minibuses, mobile benches, and other modes of transportation;

(7) To construct and operate child-care facilities;

(8) To acquire air rights for and to construct, operate, and maintain pedestrian overpasses, vehicular overpasses, public restaurants or other facilities within the air rights, to establish, operate, and maintain other restaurants or public eating facilities within the district, and to lease space within the district for sidewalk cafe tables and chairs;

(9) To construct lakes, dams, and waterways of whatever size;

(10) To employ and provide special police facilities and personnel for the protection and enjoyment of the property owners and the general public using the facilities of the district;

(11) To employ such persons as are necessary to procure such equipment as may be required to maintain the streets, alleys, malls, bridges, ramps, tunnels, lawns, trees, and decorative planting of each and every nature, and every structure or object of any nature whatsoever constructed or operated by the district;

(12) To grant permits for newsstands, sidewalk cafes, and every other useful and desired private usage of public or private property;

(13) To prohibit or restrict vehicular traffic on the streets within the district as the governing body may deem necessary and to provide the means for access by emergency vehicles to or in these areas;

(14) To acquire, construct, reconstruct, extend, maintain, operate, repair, or lease to others for public use, parking lots, or parking garages, both above and below ground, or other facilities for the parking of vehicles, including the power to install these facilities in public and private areas, whether these areas are owned in fee simple, by easement, or by leasehold, with the approval and authority of the governing body and, where desirable, to exchange property in kind by negotiations with private owners, in the acquisition of property and property rights for the public purposes contemplated by this subchapter;

(15)(A) To remove, by agreement or by the power of eminent domain, any existing structures or signs of any description in the district not conforming to the plan of improvement; and

(B) To require, whether by agreement or by the exercise of eminent domain, any or all utilities servicing the district to lay such pipe, extend such wires, provide such facilities, or conform, modify, or remove existing facilities to effectuate the plan of improvement for the district; and

(16) To do everything necessary or desirable to effectuate the plan of improvement for the district.

History. Acts 1973, No. 162, § 14; 1975, No. 402, § 5; A.S.A. 1947, § 20-1613.

14-184-116. Power of eminent domain.

(a) The right and power of eminent domain is conferred upon a central business improvement district to enter upon, take, and condemn private property for the construction of improvements described in the plan of improvement.

(b) The right and power of eminent domain conferred by this section shall be exercised by the district in accordance with the procedures in §§ 18-15-301 — 18-15-307.

(c) The right and power conferred by this section shall include, without limitation, the right and power to enter upon lands and proceed

with the work of construction prior to the assessment and the payment of damages and compensation upon the posting of a deposit by the district in accordance with the procedure described in §§ 18-15-301 — 18-15-303.

History. Acts 1973, No. 162, § 15; A.S.A. 1947, § 20-1614.

14-184-117. Powers of municipal governing bodies.

The governing body of any municipality shall have all powers necessary or desirable to undertake and carry out, or to assist a central business improvement district to undertake and carry out, all improvements described in the ordinance setting up the district including, but not limited to, the following:

(1)(A) To close existing streets or alleys, or to open new streets and alleys, or to widen or narrow existing streets and alleys, in whole or in part.

(B) These closings shall be subject to franchise, permit, or other occupancy right of utilities for existing facilities, except as provided in subdivision (8) of this section;

(2)(A) To condemn and take easements necessarily incident to the plan of improvement adopted for the district.

(B) Except as otherwise provided in this subchapter, the rules and procedures set forth in §§ 18-15-301 — 18-15-307 shall govern all condemnation proceedings;

(3)(A) To permit the district, on public property or rights-of-way, to install and operate, or to lease, public parking facilities, public music facilities, news facilities, and sidewalk cafe tables and chairs;

(B) To construct lakes, dams, and waterways of whatever size;

(C) To landscape and plant trees, bushes, shrubbery, flowers, and each and every other kind of decorative planting;

(D) To acquire air rights for the construction of pedestrian overpasses, vehicular overpasses, and public restaurants or facilities to be located in these spaces; and

(E) To permit the purchase and operation of buses, minibuses, mobile benches, and other modes of transportation;

(4) To provide special police facilities and the personnel for the protection and enjoyment of the property owners and the general public using the facilities of the district;

(5) To maintain, as provided in this subchapter, all government-owned streets, alleys, malls, bridges, ramps, tunnels, lawns, and decorative plantings of each and every nature, and every structure or object of any nature whatsoever constructed and operated by the municipality;

(6) To prohibit or restrict vehicular traffic on the streets within the district as may be deemed necessary and to provide the means for access by emergency vehicles to or in these areas;

(7) To remove any existing structures or signs of any description in the district not conforming to the plan of improvements; and

(8) Upon payment of reasonable compensation for it by the district, to require any or all utilities servicing the district to lay such pipe, extend such wires, provide such facilities, or conform, modify, or remove existing facilities to effectuate the plan of improvement for the district.

History. Acts 1973, No. 162, § 9; 1975, No. 402, § 3; A.S.A. 1947, § 20-1608.

14-184-118. Supplemental annual assessments.

(a)(1) In order to effectuate the plan of improvement and to maintain the improvements constructed under it, it may be desirable to provide additional funds for operation, maintenance, repairs, and replacements, and to levy a supplemental annual assessment upon the property owners within a central business improvement district in order to provide funds for these purposes.

(2) Supplemental annual assessment for operation, maintenance, repairs, and replacements shall be in addition to that levied and collected upon the assessment of benefits which has been, or may be, pledged and mortgaged to retire bonded indebtedness of the district as authorized in this subchapter.

(b)(1) The petition requesting the creation of the district and the ordinances creating the district and levying the tax on the assessment of benefits to provide for the retirement of bonded indebtedness may also provide for a continuing supplemental annual levy of an assessment which shall be designated for the purposes of operation, maintenance, repairs, and replacements of the improvements.

(2)(A) If the petition requesting the creation of the district does not contain a provision requesting the levy of a supplemental annual assessment for operation, maintenance, repairs, and replacements, a majority in value of the owners of real property within the district at any time may petition the governing body for the adoption of an ordinance levying such supplemental assessment.

(B) If the petition is later filed, it shall be the duty of the governing body to adopt the requested ordinance upon inquiry only as to the sufficiency of the petition.

(c)(1) The levy and collection of the supplemental annual assessment for operation, maintenance, repairs, and replacements shall not operate to reduce the total of the assessed benefits which may be, or may have been, mortgaged and pledged to secure bonded indebtedness of the district.

(2) Upon request of the board of commissioners, the annual supplemental assessment may be adjusted no more frequently than annually by the governing body.

(3)(A) Collection of the supplemental assessment for operation, maintenance, repairs, and replacements shall be in the same manner as for the collection of assessment of benefits pledged to retire indebtedness of the district.

(B) The failure to pay the supplemental assessments shall be enforced by proceedings in the same manner as other delinquent assessments.

History. Acts 1973, No. 162, § 17; A.S.A. 1947, § 20-1616.

14-184-119. Revenue-producing facilities.

(a)(1) Nothing in this subchapter shall be deemed to limit or prohibit the operation of any facility which is a part of the plan of improvement as a revenue-producing facility.

(2) Without limiting the generality of this provision, a central business improvement district may construct, operate, and maintain public restaurants, parking garages, and automobile serving facilities, places of amusement and entertainment, including facilities for the sale of food and refreshments and other similar public facilities, under circumstances which may provide revenues exceeding the cost of the operations of them.

(b) The revenues may be:

(1) Used to defray the costs of general operation and maintenance of the district;

(2) Used to retire indebtedness of the district; or

(3) Set aside and pledged in separate funds to secure other indebtedness of the district.

(c) The board of commissioners may authorize the lease of any of the facilities, or a portion of them constructed under the plan, including the parking garages, to other persons for such rental, upon such terms, and for such time as the board shall deem desirable.

History. Acts 1973, No. 162, § 16; A.S.A. 1947, § 20-1615.

14-184-120. Authority to borrow, issue bonds, etc. — Security — Amount.

(a) For the purpose of providing funds to pay preliminary expenses, to construct improvements according to the plan, or to pay for an improvement already completed, a central business improvement district may borrow money in an amount not exceeding the estimated costs of it, including interest on the money borrowed to a date six (6) months subsequent to the estimated date of completion of the work and a reserve not to exceed one (1) year's principal and interest requirements and, to that extent, may issue negotiable bonds or certificates of indebtedness bearing a rate of interest not to exceed the maximum rate allowed by law.

(b) In order to secure the bonds, the district may pledge and mortgage all uncollected assessment of benefits for the payment of the bonds.

(c) In addition to bonds for which uncollected assessments may be mortgaged and pledged, or in conjunction with them, the district is authorized to issue revenue bonds from time to time in sufficient principal amounts and to use the proceeds of them, together with any other available funds, for the purposes set forth in this subchapter.

History. Acts 1973, No. 162, § 18; 1975, No. 402, § 6; 1981, No. 474, § 3; A.S.A. 1947, § 20-1617.

CASE NOTES

In General.

The levy of assessments is restricted to the payment of the bonds under this section and § 14-184-127, and, in accordance with the statutory pledge, security and lien provisions, the language of the bond itself restricts the assessment of benefits and taxes pledged to the payment of the bonds. Statutory authorization allowing for the levy and collection of assessed funds, and statutorily mandated language found on the bond control the disposition of any funds collected under this chapter. Quapaw Cent. Bus. Imp. Dist. v. Bond-Kinman, Inc., 315 Ark. 703, 870 S.W.2d 390 (1994).

14-184-121. Bonds — Authorizing resolution.

(a) The bonds of the district, whether payable from assessments, from revenues, or from both shall be authorized by a resolution of the board of commissioners.

(b) The authorizing resolution may contain any of the terms, covenants, and conditions that are deemed desirable by the board including, without limitation, those pertaining to:

(1) The maintenance of various funds and reserves;

(2) The nature and extent of the security;

(3) The issuance of additional bonds and the nature of the lien and pledge, parity or priority, in that event;

(4) The custody and application of the proceeds of the bonds;

(5) The collection and disposition of revenues;

(6) The investing and reinvesting, in securities specified by the board, of any moneys during periods not needed for authorized purposes; and

(7) The rights, duties, and obligations of the district, the board, and of the holders and of the registered owners of the bonds.

History. Acts 1973, No. 162, § 18; 1975, No. 402, § 6; 1981, No. 474, § 3; A.S.A. 1947, § 20-1617.

14-184-122. Bonds — Terms and conditions.

(a) As the board of commissioners shall determine, the bonds may:

(1) Be coupon bonds, payable to bearer, or may be registrable as to principal only or as to principal and interest, and may be made exchangeable for bonds of another denomination;

(2) Be in such form and denomination;

(3) Have such date or dates;

(4) Be stated to mature at such times;

(5) Bear interest payable at such times and at such rate or rates. However, no bond may bear interest at a rate exceeding the maximum rate allowed by law;

(6) Be payable at such places within or without the State of Arkansas;

(7) Be made subject to such terms of redemption in advance of maturity at such prices; and

(8) Contain such terms and conditions.

(b) The bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to provisions as to registration, as set forth in this section.

History. Acts 1973, No. 162, § 18; 1975, No. 402, § 6; 1981, No. 474, § 3; A.S.A. 1947, § 20-1617.

14-184-123. Bonds — Trust indenture.

(a) The authorizing resolution may provide for the execution by the district with a bank or trust company, within or without the State of Arkansas, of a trust indenture.

(b) The trust indenture may contain any terms, covenants, and conditions that are deemed desirable by the board including, without limitation, those pertaining to:

(1) The maintenance of various funds and reserves;

(2) The nature and extent of the security;

(3) The issuance of additional bonds and the nature of the lien and pledge, parity or priority, in that event;

(4) The custody and application of the proceeds of the bonds;

(5) The collection and disposition of assessments and of revenues;

(6) The investing and reinvesting, in securities specified by the board, of any moneys during periods not needed for authorized purposes; and

(7) The rights, duties, and obligations of the board and the holders and registered owners of the bonds.

History. Acts 1973, No. 162, § 18; 1975, No. 402, § 6; 1981, No. 474, § 3; A.S.A. 1947, § 20-1617.

14-184-124. Bonds — Sale.

(a) The bonds may be sold for such price, including without limitation sale at a discount, and at such rate of interest and in such manner as the board may determine by resolution.

(b) [Repealed].

(c) [Repealed].

(d) [Repealed].

(e) Any bank, savings and loan association, or other financial institution regulated by an agency of the state in which it is incorporated, or the federal government may bid upon and purchase these bonds, notwithstanding the fact that a director, officer, employee, or shareholder of that financial institution is a member of the board of the district, and the provisions of §§ 14-88-309, 14-88-310, and 14-88-402 shall not apply to any such transaction.

History. Acts 1973, No. 162, § 18; 1975, No. 402, § 6; 1981, No. 474, § 3; A.S.A. 1947, § 20-1617; Acts 1997, No. 933, § 1.

A.C.R.C. Notes. The introductory language of Acts 1997, No. 933, § 1 provided: "Arkansas Code Section 14-184-124(a) is amended to read as follows"; however Acts 1997, No. 933, § 1 set out subsections (b)-(d) as deleted, and did not set out (e), set out (e) as deleted, nor redesignate (e) as (b). Pursuant to § 1-2-303, the Arkansas Code Revision Commission set out subsection (e), but is unable to correct the designation.

Amendments. The 1997 amendment rewrote (a); and deleted (b)-(d).

14-184-125. Bonds — Execution and seal.

(a)(1)(A) The bonds shall be executed by the manual or facsimile signature of the chairman of the board and by the manual signature of the secretary of the board.

(B) The coupons attached to the bonds shall be executed by the facsimile signature of the chairman.

(2) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of the bonds or coupons, their signatures shall, nevertheless, be valid and sufficient for all purposes.

(b) The district shall adopt and use a seal in the execution and issuance of the bonds, and each bond shall be sealed with the seal of the district.

History. Acts 1973, No. 162, § 18; 1975, No. 402, § 6; 1981, No. 474, § 3; A.S.A. 1947, § 20-1617.

14-184-126. Refunding bonds.

(a)(1) Bonds may be issued for the purpose of refunding any bonds issued under this subchapter.

(2)(A) Refunding bonds may be either sold or delivered in exchange for the bonds being refunded.

(B) If sold, the proceeds may be either applied to the payment of the bonds being refunded or deposited in trust and there maintained in cash or investments for the retirement of the bonds being refunded, as shall be specified by the central business improvement district in the resolution or trust indenture securing the bonds.

(b)(1) The resolution or trust indenture securing the refunding bonds may provide that the refunding bonds shall have the same priority on assessments or revenues pledged for their payment as was enjoyed by the bonds refunded.

(2) Revenue refunding bonds shall be sold and secured in accordance with the provisions of this subchapter pertaining to the sale and security of the bonds initially issued.

(c) Refunding bonds secured primarily by the mortgage and pledge of assessed benefits may also be issued in accordance with the laws governing refunding bonds of municipal improvement districts generally.

History. Acts 1973, No. 162, § 20; A.S.A. 1947, § 20-1619.

14-184-127. Obligation on bonds.

(a)(1) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter, that the bonds shall be obligations only of the central business improvement district, and that in no event shall they constitute any indebtedness for which the faith and credit of the municipality or any of its revenues are pledged.

(2) No member of the board of commissioners shall be personally liable on the bonds or for any damages sustained by anyone in connection with any contracts entered into in carrying out the purposes and intent of this subchapter unless he shall have acted with corrupt intent.

(b)(1) The principal of, interest on, and paying agent's fees in connection with the bonds shall be secured by a lien on and pledge of, and shall be payable from, the assessments levied against the real property within the district or the revenues derived from the operation of revenue-producing facilities of the district including, without limitation, lease rentals as provided for in this subchapter, constructed or acquired under the provisions of this subchapter.

(2) In this regard, the district is authorized to issue bonds for the purposes of constructing and equipping one (1) or more separate and distinct facilities as it may determine and, in the event more than one (1) facility is involved, to operate and pledge revenues from all such facilities as though a single project were involved.

(c)(1) In the case of a separate facility financed by a separate bond issue, the district may pledge and use for debt service and reserves maintained in connection with the single project revenues derived from another project, either on a parity or subordinate lien basis as may be determined by the district, subject to the provisions of any resolutions or trust indentures which authorized and secured bonds previously issued.

(2) The right to issue subsequent issues of bonds can, if the district so determines, be reserved in any authorizing resolution or trust indenture on either a parity or subordinate lien basis and upon such terms and conditions as the district may determine and specify in the particular authorizing resolution or trust indenture.

History. Acts 1973, No. 162, § 19; A.S.A. 1947, § 20-1618.

CASE NOTES

In General.

The levy of assessments is restricted to the payment of the bonds under § 14-184-120 and this section, and, in accordance with the statutory pledge, security and lien provisions, the language of the bond itself restricts the assessment of benefits and taxes pledged to the payment of the bonds. Statutory authorization allowing for the levy and collection of assessed funds, and statutorily mandated language found on the bond control the disposition of any funds collected under this chapter. Quapaw Cent. Bus. Imp. Dist. v. Bond-Kinman, Inc., 315 Ark. 703, 870 S.W.2d 390 (1994).

14-184-128. Bonds — Tax exemption.

(a) Bonds issued under the provisions of this subchapter and the interest on them shall be exempt from all state, county, and municipal taxes.

(b) This exemption shall include income, inheritance, and estate taxes.

History. Acts 1973, No. 162, § 21; A.S.A. 1947, § 20-1620.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Ark. Const. Amend. 57, § 1 and § 26-3-302. Arkansas Const. Amend. 57, § 1 provides that the General Assembly may classify intangible personal property for assessment at lower percentages of value than other property and may exempt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempts all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

14-184-129. Public investment in bonds.

(a) Any municipality; any board, commission, or other authority duly established by ordinance of any municipality; the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any municipality; or the board of trustees of any retirement system created by the General Assembly of the State of Arkansas may, in its discretion, invest any of its funds not immediately needed for its purposes in bonds issued under the provisions of this subchapter.

(b) Bonds issued under the provisions of this subchapter shall be eligible to secure the deposit of public funds.

History. Acts 1973, No. 162, § 22; A.S.A. 1947, § 20-1621.

14-184-130. Dissolution of district.

(a) A central business improvement district created under this subchapter shall continue in existence in perpetuity unless dissolved by ordinance of the governing body to be enacted solely in the manner provided in this section:

(1) A majority of the board of commissioners and a majority in value of the owners of real property in the district may petition the governing body for the dissolution of the district; or

(2) The owners of real property in the district comprising two-thirds (⅔) in value of the real property may petition the governing body for the dissolution of the district;

(3) Upon the filing with the clerk or recorder of the municipality in which the district is located of a petition in accordance with subdivision (1) or (2) of this subsection, it shall then be the duty of the governing body to adopt an appropriate ordinance dissolving the district and providing for the distribution of its assets.

(b)(1) If practicable, all funds of the district remaining after the payment of any outstanding indebtedness shall be distributed pro rata to the owners of real property within the district in proportion to the assessment of benefits as it appears according to the most recent reassessment of them; otherwise, funds which cannot be practicably refunded shall be paid to the municipality in which the district is located for its general account.

(2) Title to all personal property owned by the district and title to all real property, improvements, easements, and other rights constructed or acquired by the district shall, unless otherwise provided in any conveyance, easement, or grant of right, pass to the municipality in which the district is located.

(c) No district shall be dissolved at any time during which there shall be outstanding bonded indebtedness of the district unless funds sufficient to retire the indebtedness including all interest, redemption premium, if any, trustee's and paying agent's fees, and cost of publication of notices of redemption have been deposited in trust according to the terms of the resolution or trust indenture authorizing the bonded indebtedness.

History. Acts 1973, No. 162, § 23; A.S.A. 1947, § 20-1622.

Subchapter 2 — Financing of Improvements

SECTION.
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14-184-202. Definition.
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SECTION.
14-184-211. Bonds — Sale.
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14-184-215. Obligation on bonds.
14-184-216. Bonds — Tax exemption.
14-184-217. Public investment in bonds.

Effective Dates. Acts 1975, No. 403, § 13: Mar. 14, 1975. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that the deterioration of the central business districts of some cities of the State is a threat to the property tax and revenue sources of such municipalities, that the elimination of urban blight and decay and the modernization and the general improvement of such central business districts are urgent, and that funds to permit property owners to modernize and improve central business district properties may be impossible to obtain without the immediate benefits of this Act. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health, and safety shall take effect and be in force from the date of its approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 474, § 9: Mar. 13, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws relating to Suburban Improvement Districts and Central Business Improvement Districts are unduly restrictive with respect to the maximum interest rates that such districts are allowed to pay and receive and that this Act is designed to permit such districts to pay and receive the maximum lawful rates of interest; that Central Business Improvement Districts are now severely hampered by their inability to issue revenue bonds to acquire property in the boundaries of the District and that this Act will authorize the issuance of such bonds and will thereby enable such districts to be more effective in eliminating urban blight and decay; that this Act should be given effect immediately to help solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

14-184-201. Legislative determinations.

It is determined and declared by the General Assembly that:

(1) The deterioration of the central business districts of urban centers of the state is a threat to the property tax and other revenue sources of such municipalities;

(2) Funds for the improvement and modernization of property and for the acquisition of property for the purpose of improvement and modernization of the property in such areas are in many instances unavailable from established lending institutions at reasonable rates of interest;

(3) The public interest requires a convenient and reasonable source of permanent financing to enable the acquisition of property for the purpose of modernization and improvement and to enable property owners to make the needed improvements in conjunction with plans of improvement undertaken, or to be undertaken, by central business improvement districts created under the authority of §§ 14-184-101 — 14-184-130; and

(4) Such improvements will:

(A) Operate to eliminate and prevent urban blight and decay;

(B) Provide for the modernization of properties within the central business districts thus improving the local tax structure, reducing crime and disease, and other hazards to persons and property; and

(C) Be of general public benefit.

History. Acts 1975, No. 403, § 1; 1981, No. 474, § 6; 1985, No. 912, § 1; A.S.A. 1947, § 20-1625.

14-184-202. Definition.

As used in this subchapter, unless the context otherwise requires, "property" means real property and tangible and intangible personal property.

History. Acts 1975, No. 403, § 1; 1985, No. 912, § 1; A.S.A. 1947, § 20-1625.

14-184-203. Construction.

(a) This subchapter shall be construed liberally.

(b) The enumeration of any object, purpose, power, manner, method, and thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, and things.

History. Acts 1975, No. 403, § 11; A.S.A. 1947, § 20-1634.

14-184-204. Provisions supplemental.

This subchapter shall be construed as cumulative of existing laws relating to the creation, operation, and existence of municipal improvement districts and shall not repeal any existing law unless the law is in direct conflict with this subchapter. It is the intent of this subchapter to authorize and enumerate additional powers for these districts.

History. Acts 1975, No. 403, § 10; A.S.A. 1947, § 20-1634n.

14-184-205. Revenue bonds authorized.

Central business improvement districts created under the authority of § 14-184-101 et seq. are authorized to issue revenue bonds for the purpose of providing funds for the acquisition, construction, reconstruction, repair, replacement, renovation, or any other restoration or improvement of real and personal property located within the boundaries of the district which, in the opinion of the board of commissioners, will further the elimination of urban blight and decay and provide for the modernization and general improvement of the properties within the district.

History. Acts 1975, No. 403, § 2; 1981, No. 474, § 7; A.S.A. 1947, § 20-1626.

14-184-206. Loans to property owners.

(a) Direct loans may be made by a central business improvement district to property owners, including lessees of the property owners, within the district on such terms and conditions, and with such security for repayment, as the commissioners shall deem necessary and desirable.

(b) Loans may be evidenced by promissory notes, debentures, or other evidence of indebtedness, and may be secured by mortgages, security interests in personal property, guarantees, or such other security as the commissioners shall require in their sole discretion.

History. Acts 1975, No. 403, § 3; 1985, No. 1034, § 1; A.S.A. 1947, § 20-1627.

14-184-207. Providing of funds.

(a) For the purpose of providing funds to make loans including any reserve for contingencies deemed desirable, a central business improvement district may issue negotiable bonds or certificates of indebtedness bearing a rate of interest not to exceed the maximum rate allowed by law.

(b) In order to secure the bonds, the district may pledge, assign, or otherwise encumber any notes, debentures, evidences of indebtedness, mortgages, security interests, or other instrument of security or guaranty which may have been obtained to evidence a loan from the district to property owners within the district to accomplish the purposes of this subchapter.

(c) Assessments of benefits against the property owners in the district may not be pledged to secure the payment of the bonds authorized by this subchapter.

History. Acts 1975, No. 403, § 4; 1981, No. 425, § 51; 1981, No. 474, § 4; A.S.A. 1947, § 20-1628.

14-184-208. Bonds — Authorizing resolution.

(a) The bonds of a central business improvement district shall be authorized by a resolution of the board of commissioners.

(b) The authorizing resolution may contain any of the terms, covenants, and conditions that are deemed desirable by the board, including, without limitation, those pertaining to:

(1) The maintenance of various funds and reserves;

(2) The nature and extent of the security;

(3) The issuance of additional bonds and the nature of the lien and pledge, parity or priority, in that event;

(4) The custody and application of the proceeds of the bonds;

(5) The collection and disposition of revenues;

(6) The investing and reinvesting, in securities specified by the board, of any moneys during periods not needed for authorized purposes; and

(7) The rights, duties, and obligations of the district, the board, and of the holders and of the registered owners of the bonds.

History. Acts 1975, No. 403, § 5; 1981, No. 474, § 5; A.S.A. 1947, § 20-1629.

14-184-209. Bonds — Terms and conditions.

(a) As the board shall determine, the bonds may:

(1) Be coupon bonds, payable to bearer, or may be registrable as to principal only or as to principal and interest and may be exchangeable for bonds of another denomination;

(2) Be in such form and denomination;

(3) Have such date or dates;

(4) Be stated to mature at such times;

(5) Bear interest payable at such times and at such rate or rates, provided that no bond may bear interest at a rate exceeding the maximum rate allowed by law;

(6) Be payable at such places within or without the State of Arkansas;

(7) Be subject to such terms of redemption in advance of maturity at such prices; and

(8) Contain such terms and conditions.

(b) The bonds shall have all of the qualities of negotiable instruments under the laws of the State of Arkansas, subject to provisions as to registration, as set forth in this section.

History. Acts 1975, No. 403, § 5; 1981, No. 474, § 5; A.S.A. 1947, § 20-1629.

14-184-210. Bonds — Trust indenture.

(a) The authorizing resolution may provide for the execution by the district with a bank or trust company, within or without the State of Arkansas, of a trust indenture.

(b) The trust indenture may contain any terms, covenants, and conditions that are deemed desirable by the board including, without limitation, those pertaining to:

(1) The maintenance of various funds and reserves;

(2) The nature and extent of the security;

(3) The issuance of additional bonds and the nature of the lien and pledge, parity or priority, in that event;

(4) The custody and application of the proceeds of the bonds;

(5) The collection and disposition of assessments and revenues;

(6) The investing and reinvesting, in securities specified by the board, of any moneys during periods not needed for authorized purposes; and

(7) The rights, duties, and obligations of the board and the holders and registered owners of the bonds.

History. Acts 1975, No. 403, § 5; 1981, No. 474, § 5; A.S.A. 1947, § 20-1629.

14-184-211. Bonds — Sale.

(a) The bonds may be sold for such price including, without limitation sale at a discount, and at such rate of interest and in such manner as the board may determine by resolution.

(b) The bonds or certificates of indebtedness may be sold to any bank, savings and loan association, or other financial institution regulated by an agency of the state in which it is incorporated, or the federal government, notwithstanding the fact that a director, officer, employee, or shareholder of the financial institution is a member of the board of the district. The provisions of §§ 14-88-309, 14-88-310, 14-88-402 shall not apply to any such transaction.

History. Acts 1975, No. 403, § 5; 1981, No. 474, § 5; A.S.A. 1947, § 20-1629.

14-184-212. Bonds, coupons — Execution — Seal.

(a)(1)(A) The bonds shall be executed by the manual or facsimile signature of the chairman of the board and by the manual signature of the secretary of the board.

(B) The coupons attached to the bonds shall be executed by the facsimile signature of the chairman.

(2) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of the bonds or coupons, their signatures shall, nevertheless, be valid and sufficient for all purposes.

(b) The district shall adopt and use a seal in the execution and issuance of the bonds. Each bond shall be sealed with the seal of the district.

History. Acts 1975, No. 403, § 5; 1981, No. 474, § 5; A.S.A. 1947, § 20-1629.

14-184-213. Bonds — Conversion.

(a) The bonds may be sold with the privilege of conversion into an issue bearing other rate or rates of interest, upon the terms that the board receive no less and pay no more than it would receive and pay if the bonds were not converted.

(b) The conversion shall be subject to the approval of the board.

History. Acts 1975, No. 403, § 5; 1981, No. 474, § 5; A.S.A. 1947, § 20-1629.

14-184-214. Refunding bonds.

(a)(1) Bonds may be issued for the purpose of refunding any bonds issued under this subchapter.

(2)(A) Refunding bonds may be either sold or delivered in exchange for the bonds being refunded.

(B) If sold, the proceeds may be either applied to the payment of the bonds being refunded or deposited in trust and there maintained in cash or investments for the retirement of the bonds being refunded, as shall be specified by the central business improvement district in the resolution or trust indenture securing the bonds.

(b)(1) The resolution or trust indenture securing the refunding bonds may provide that the refunding bonds shall have the same priority on revenues pledged for their payment as was enjoyed by the bonds refunded.

(2) Revenue refunding bonds shall be sold and secured in accordance with the provisions of this subchapter pertaining to the sale and security of the bonds initially issued.

History. Acts 1975, No. 403, § 7, A.S.A. 1947, § 20-1631.

14-184-215. Obligation on bonds.

(a)(1) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter, that the bonds shall be obligations only of the central business improvement district, and that in no event shall they constitute any indebtedness for which the faith and credit of the municipality or any of its revenues are pledged.

(2) No member of the board of commissioners shall be personally liable on the bonds or for any damages sustained by anyone in connection with any contracts entered into in carrying out the purposes

and intent of this subchapter unless he shall have acted with corrupt intent.

(b) The principal of, interest on, and paying agent's fees in connection with the bonds shall be secured by a lien on and pledge of the instruments evidencing loans specified in § 14-184-206.

History. Acts 1975, No. 403, § 6; A.S.A. 1947, § 20-1630.

14-184-216. Bonds — Tax exemption.

(a) Bonds issued under the provisions of this subchapter and the interest on them shall be exempt from all state, county, and municipal taxes.

(b) This exemption shall include income, inheritance, and estate taxes.

History. Acts 1975, No. 403, § 8; A.S.A. 1947, § 20-1632.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Ark. Const. Amend. 57, § 1 and § 26-3-302. Arkansas Const. Amend. 57, § 1 provides that the General Assembly may classify intangible personal property for assessment at lower percentages of value than other property and may exempt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempts all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

14-184-217. Public investment in bonds.

(a) Any municipality; any board, commission, or other authority duly established by ordinance of any municipality; the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any municipality; the board of trustees of any retirement system created by the General Assembly of the State of Arkansas may, in its discretion, invest any of its funds not immediately needed for its purposes in bonds issued under the provisions of this subchapter.

(b) Bonds issued under the provisions of this subchapter shall be eligible to secure the deposit of public funds.

History. Acts 1975, No. 403, § 9; A.S.A. 1947, § 20-1633.

CHAPTER 185

METROPOLITAN PORT AUTHORITIES

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Effective Dates. Acts 1970 (Ex. Sess.), No. 59, § 4: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1975 (Extended Sess., 1976), No. 1232, § 6: Feb. 16, 1976. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the present laws pertaining to metropolitan port authorities inhibit the financing of improvements immediately necessary to the continued growth and development of the State, that this condition can be remedied only by this Act and that this condition can be remedied without affecting the nature of the obligations authorized to be issued by port authorities. Therefore, an emergency is declared, and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect upon its approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being nec-

essary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1983, No. 623, § 7: Mar. 22, 1983. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that the proper, economical and efficient operation of the ports, harbors, river-rail terminals, barge terminals and parks for industrial and commercial operations in this State now or hereafter in existence, is essential to the economic and overall benefit and welfare of the State and its inhabitants and the provisions hereof clarifying and expanding the purposes and powers of metropolitan port authorities are necessary for the prompt and full realization of such necessary and intended benefits. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1987, No. 46, § 4: Feb. 16, 1987. Emergency clause provided: "It has been found and it is hereby declared that at least one port authority project pending in this state can be financed only upon the terms expressly permitted by this act, and that such project is essential to the continued development of the economy of a substantial part of the state. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace and safety, shall be in force upon its passage and approval."

Acts 1987, No. 1017, § 6: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case Ricarte v. State, CR 86-31, a question has arisen over the validity of Act 1232 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Ark. L. Rev. Lex Aquae Arkansas, 27 Ark. L. Rev. 429.

C.J.S. 63 C.J.S., Mun. Corp., § 1055. 64 C.J.S., Mun. Corp., § 1812 et seq.

14-185-101. Title.

This chapter shall be referred to and may be cited as the "Metropolitan Port Authority Act of 1961."

History. Acts 1961, No. 439, § 1; A.S.A. 1947, § 21-1501.

14-185-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "County" means a county of this state or, where a county is divided into two (2) districts, the term "county" means the entire county or either district of the county;

(2) "County court" means the quorum court after the quorum court is constituted and acting as the county court under Arkansas Constitution, Amendment 55 or, until such quorum court is so constituted and acting, the county judge sitting as the county court;

(3) "Construct" means to acquire or build, in whole or in part, in such manner and by such method, including contracting therefor, and if the

latter, by negotiation or bidding upon such terms and pursuant to such advertising as the port authority shall determine to be in the public interest and necessary, under the circumstances existing at the time, to accomplish the purposes of and authorities set forth in this chapter;

(4) "Governing body" means the council, board of directors, or city commission of any municipality;

(5) "Municipality" means a city of the first or second class or an incorporated town;

(6) "Equip" means to install or place on or in any building or structure equipment of any and every kind, whether or not affixed, including, without limiting the generality of the foregoing, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture, furnishings, and personal property of every kind;

(7) "Sell" means to sell for such price, in such manner, and upon such terms as the port authority shall determine including, without limiting the generality of the foregoing, private or public sale, and, if public, pursuant to such advertisement as the port authority shall determine, sale for cash or credit payable in lump sum or in installments, over such period as the port authority shall determine, and, if on credit, with or without interest and at such rate or rates as the port authority shall determine;

(8) "Lease" means to lease for such rentals, for such period or periods and upon such terms and conditions as the port authority shall determine including, without limiting the generality of the foregoing, the granting of such renewal or extension options for such rentals, for such period or periods, and upon such terms and conditions as the port authority shall determine and the granting of such purchase options for such prices and upon such terms and conditions as the port authority shall determine;

(9) "Facilities", "properties", or "property" means any real property, personal property, or mixed property of any and every kind that can be used or that will be useful in carrying out any of the purposes of this chapter;

(10) "Acquire" means to obtain at any time, by gift, purchase, or other arrangement, any project or any portion of a project, whether theretofore constructed and equipped, theretofore partially constructed and equipped, or being constructed and equipped at the time of acquisition, for such consideration and pursuant to such terms and conditions as the port authorities shall determine;

(11) "Person" means any natural person, partnership, corporation, association, organization, business trust, and public or private person or entity;

(12) "Port authority" or "port authorities" means a port authority or port authorities established pursuant to the provisions of this chapter;

(13) "Mortgage lien" includes and means security interest in any personal property embodied in the facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of bonds issued under this chapter.

History. Acts 1961, No. 439, § 9; 1961, No. 439, § 18 as added by Acts 1975 (Extended Sess., 1976), No. 1232, § 3; 1970 (Ex. Sess.), No. 59, § 1; 1975 (Extended Sess., 1976), No. 1232, § 1; 1981, No. 425, § 34; 1983, No. 623, § 3; A.S.A. 1947, §§ 21-1509, 21-1517; reen. Acts 1987, No. 1017, §§ 1, 3.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 1017, §§ 1, 3. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Publisher's Notes. Acts 1983, No. 623, § 5, provided: "This act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the proposes hereof."

14-185-103. Construction.

(a) This chapter is intended and shall be construed to supplement all constitutional provisions and acts of the General Assembly designed to accomplish, in whole or in part, the purposes of this chapter.

(b) When applicable, this chapter may be used as an alternative notwithstanding any constitutional provision or other legislation authorizing counties, municipalities, or port authorities, and other agencies or commissions, to accomplish, in whole or in part, the purposes specified in this chapter.

(c) This chapter shall be liberally construed to accomplish its purposes.

History. Acts 1961, No. 439, § 15; A.S.A. 1947, § 21-1515.

14-185-104. Power to establish.

(a) Two (2) or more counties or two (2) or more municipalities, whether or not in the same county, or one (1) or more counties and one (1) or more municipalities, whether or not in the same county, within or near which there is a navigable river or waterway are authorized and empowered to organize and establish a metropolitan port authority, in the manner and for the accomplishment of the purposes specified in this chapter.

(b)(1) Each authority established under this chapter shall consist of and be governed by a board of directors.

(2) The members of the board shall be selected and shall serve as set forth in this chapter.

History. Acts 1961, No. 439, § 2; A.S.A. 1947, § 21-1502.

14-185-105. Organization of authority.

(a) The governing body of each municipality and the county court of each county desiring to organize a port authority under this chapter shall declare its intention to do so by ordinance of the governing body of the municipality and by order of the county court of the county.

(b)(1) The ordinance shall authorize and direct the mayor of the municipality, and the order shall authorize and direct the county judge

of the county to prepare, or cause to be prepared, and to sign and file with the circuit clerk of any county which is to be a party to the organization of an authority under this chapter a petition requesting the circuit court of the county where the petition is filed to establish an authority under this chapter.

(2) The petition shall at least contain the following information:

(A) The identity of the municipalities and counties desiring to organize the port authority;

(B) The population of each petitioning municipality and each petitioning county, which population of a petitioning county wherever referred to in this chapter shall mean the population of the county exclusive of the population of each petitioning municipality in the county, according to the last federal census;

(C) The official name desired by the petitioners for the authority to be established;

(D) The total number of the members of the board of directors of the authority desired by the petitioning municipalities or counties, subject to the conditions pertaining thereto specified in this chapter;

(E) The number of the members of the board of the authority that shall represent each petitioning municipality or county, determined in accordance with the conditions specified in this chapter; and

(F) A request that the circuit court enter an order designating the total number of the members of the board, designating the number that shall represent each petitioning municipality or county and establishing an authority under the provisions of this chapter as a public agency of the petitioning municipalities or counties, but with the powers set forth in this chapter, which need not be enumerated in the order.

(c)(1) The circuit court shall enter an order establishing and naming the authority and designating the board in accordance with the petition.

(2) The circuit court shall enter the order as a record of the court, and it shall be placed in the permanent records of the circuit clerk of the court.

(d) After the entry of the order of the circuit court establishing the authority and after the appointments of the members of it by the governing bodies of the petitioning municipalities and the county courts of the petitioning counties, the authority shall be in existence. It shall thereafter exist as a separate entity and body corporate as set forth in this chapter.

History. Acts 1961, No. 439, § 3;
A.S.A. 1947, § 21-1503.

14-185-106. Members of the board of authority.

(a) Immediately after the filing of the order of the circuit court, the governing body of each petitioning municipality and the county court of each petitioning county shall appoint the persons to be the members of the board of the authority established by the order of the circuit court in accordance with the provisions of the order as to the number of members to be selected by the respective petitioning municipalities and counties.

(b) The total number of the members of the board of the authority established by the order must be an odd number, each petitioning municipality and each petitioning county must have at least one (1) representative as a member of the board, and the number of members that represent each petitioning municipality and each petitioning county shall be apportioned in the ratio that each petitioner's population bears to the total population of all petitioners.

(c)(1) The term of each member of the board shall be for three (3) years from the date of his appointment by the governing body of the municipality or the county court of the county, and he shall serve for such term and thereafter until his successor shall be duly appointed and qualified.

(2) At the expiration of the term of each member of the board, the governing body of the municipality or the county court of the county which is represented on the board by the member shall appoint a successor member or may reappoint the same member to another term.

(d)(1) Any vacancy arising for any reason other than the expiration of the term of a particular member shall be filled by the governing body of the municipality or the county court of the county which is represented on the board by the resigning or vacating member, and the person appointed to fill the vacancy shall serve for the unexpired portion of the term of the resigning or vacating member.

(2) In the event a vacancy on the board is not filled by the municipality or county entitled to fill it within ninety (90) days after the vacancy occurs, a majority of the other members of the board shall promptly fill the vacancy by appointing a qualified person to serve for the unexpired portion of the term of the resigned or vacated member. For purposes of this provision, the mere expiration of a member's term shall not create a vacancy, but the member whose term has expired shall continue to serve until his successor shall be appointed and qualified or until he shall resign or otherwise vacate his office.

(e) Before entering upon his duties, each member of the board of the authority shall take and subscribe and file in the office of the circuit clerk of the county where the order establishing the authority was filed an oath to support the Constitution of the United States and the Constitution of the State of Arkansas and faithfully to perform the duties of the office upon which he is about to enter.

(f) To be eligible for membership on the board, a person, at the time of his appointment and qualification by filing the required oath, must be

a qualified elector of the municipality or of the county, as the case may be, that he represents on the board.

(g)(1)(A) The board of each authority shall select one (1) of its members as chairman, one (1) of its members as secretary, and one (1) of its members as treasurer.

(B) The offices of secretary and treasurer may be combined and held by one (1) member.

(2) The term and duties of the officers shall be fixed by resolution of the board of each authority.

History. Acts 1961, No. 439, § 3; A.S.A. 1947, § 21-1503.

14-185-107. Permanent records of authority.

A certified copy of each ordinance and a certified copy of each county court order appointing persons to membership on the board shall be filed with the secretary of the board of the authority and shall be and remain part of the permanent records of the authority.

History. Acts 1961, No. 439, § 3; A.S.A. 1947, § 21-1503.

14-185-108. General purposes of authority.

(a) Port authorities are authorized to accomplish the following general purposes:

(1) To establish, acquire, develop, improve, or maintain harbors, ports, river-rail terminals, barge terminals, parks for industrial and commercial operations, and related improvements and facilities in or near any city or incorporated town in the State of Arkansas as it may deem feasible for the expeditious and efficient handling of commerce by water, air, roadway, highway, or other from and to any other part of the State of Arkansas or any other states and foreign countries. The authority shall accept such proposal as is commercially reasonable and in the authority's best interest;

(2) To acquire, purchase, install, lease, own, hold, use, control, construct, equip, maintain, develop, and improve lands and facilities, of whatever nature necessary or desirable, in connection with establishing, developing, improving, and maintaining the ports, harbors, river-rail terminals, barge terminals, and parks for industrial and commercial operations including, without limitation, buildings, warehouses, utilities, and the improvement of portions of waterways, highways or roadways, and other facilities not within the exclusive jurisdiction of the federal government;

(3) To foster and stimulate the shipment of freight and commerce, whether by water, air, roadway, highway, or other, and industrial and commercial development at and through the ports, harbors, river-rail terminals, barge terminals, and parks for industrial and commercial operations and industries and businesses located on them, whether

originating within or without the State of Arkansas, including the investigation, handling, and dealing with matters pertaining to all transportation rates and rate structures affecting them;

(4) To cooperate with the federal government, the State of Arkansas, and any agency, department, corporation, or instrumentality of either in the development, improvement, maintenance, and use of the harbors, ports, river-rail terminals, barge terminals, parks for industrial and commercial operations and industries and businesses located in them in connection with the furtherance of the operation and needs of the federal government, the State of Arkansas, and any such industry or business;

(5) To accept and use funds from any sources and to use them in such a manner as is within the purposes of the authorities;

(6) To cooperate with the State of Arkansas and all agencies, departments, and instrumentalities of it and with other port authorities, counties, municipalities, and political subdivisions in the maintenance, development, improvement, and use of the harbors, ports, river-rail terminals, barge terminals, and parks for industrial and commercial operations;

(7) To cooperate with any other state and all its agencies, departments, and instrumentalities and port authorities, counties, municipalities, political subdivisions, and all their instrumentalities and agencies in other states in the maintenance, development, improvement, and use of harbors, ports, river-rail terminals, barge terminals, and parks for industrial and commercial operations;

(8) To act as agent for the federal government or any agency, department, corporation, or instrumentality of it and for the State of Arkansas and any agency, department, instrumentality, or political subdivision of it in any matter pertaining to the accomplishment of the purposes of the authorities;

(9) To acquire, construct, equip, maintain, develop, and improve facilities at the ports, harbors, river-rail terminals, barge terminals, and parks for industrial and commercial operations to secure and develop industry, business, and commerce;

(10) To sell, lease, contract concerning, or permit the use of all or any part of the facilities so acquired, constructed, and equipped to any person for industrial or commercial activities; and

(11) In general, to do and perform any act or function which may tend to or be useful toward the development and improvement of harbors, ports, river-rail terminals, barge terminals, and parks for industrial and commercial operations and to further the movement of waterborne and other forms of commerce, foreign and domestic, through the harbors, ports, river-rail terminals, barge terminals, and parks for industrial and commercial operations.

(b) The enumeration of these purposes shall not limit or circumscribe the broad objectives and purposes of this chapter and the broad objectives of developing to the utmost the ports, harbors, river-rail terminals, barge terminals, and industrial and commercial develop-

ment possibilities of the State of Arkansas, and its political subdivisions.

History. Acts 1961, No. 439, § 4; 1983, No. 623, § 1; A.S.A. 1947, § 21-1504.

Cross References. Multicounty Airport and Riverport Financing Act, § 26-81-101 et seq.

14-185-109. Powers of authority generally.

In order to enable authorities to carry out the purposes of this chapter, the authorities shall:

(1) Have the powers of a body corporate including the power to sue and be sued, to make contracts, and to adopt and use a seal;

(2) Have the power to rent, acquire, improve, develop, operate, maintain, lease, buy, own, mortgage, otherwise encumber, sell, dispose of, and otherwise deal with such real, personal, or mixed property as the authorities may deem proper, necessary, or desirable to carry out the purposes and provisions of this chapter, all or any of them;

(3) Have the power to acquire, purchase, install, lease, rent, own, hold, use, control, develop, sell, improve, construct, maintain, equip and operate, and otherwise deal with and dispose of any buildings, wharves, docks, piers, quays, elevators, tipples, bulk loading and unloading facilities, water terminals, air terminals, rail terminals, roadways and approaches, compresses, refrigeration storage plants, landing places, basins, belt line roads, highways, bridges, causeways, shipyards, shipping facilities, transportation facilities, boats, barges, machinery, equipment, dredging of approaches, warehouses, and other structures, and any and all facilities and work in connection with them, of every nature whatever incidental to and useful or convenient for the accomplishment of the purposes of this chapter and needful for the convenient use of them in aid of commerce, whether by water, air, roadway, highway, or other, and industrial and commercial operations;

(4) Have the power consistent with this chapter to acquire, own, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, lease with or without options to purchase, lease with or without options to extend or renew, contract concerning, or otherwise deal in, with, or dispose of any lands, buildings, improvements, machinery, equipment, or facilities of any and every nature for the securing and developing of industry and commerce and parks for industrial and commercial operations;

(5) Have the power to appoint and employ and dismiss at pleasure, such agents and employees as may be selected by the authorities and to fix and pay their compensation;

(6) Have the power to establish an office for the transaction of business at such place as, in the opinion of the authorities, shall be advisable or necessary in carrying out the purposes of this chapter;

(7) Have the power to create and operate such agencies, departments, and instrumentalities as the authorities may deem necessary, desirable, or useful for the accomplishment and furtherance of any of the purposes of this chapter;

(8) Have the power to pay and expend funds for all necessary costs and expenses involved in and incident to the formation and organization of the authorities and the carrying out of the powers and purposes of this chapter;

(9) Have the power to adopt, alter, or repeal from time to time its own bylaws, rules, and regulations consistent with this chapter governing the manner in which the business of the authorities may be transacted and in which the purposes and powers may be transacted and in which the purposes and powers of the authorities may be accomplished and carried out;

(10) Have the power to fix and change, from time to time, rates and charges for the use of the facilities and services of the authorities;

(11) Have the power to promulgate and to alter or repeal, from time to time, rules and regulations consistent with this chapter and to enforce the same governing and pertaining to the use of the facilities and services of the authorities;

(12) Have the power to sell, contract concerning, or lease any of its docks, wharves, piers, quays, elevators, compresses, refrigeration storage plants, warehouses, industrial or commercial plants and facilities, and other improvements and facilities of whatever nature and to permit the use of any such facilities by any person engaging in any industrial or commercial activity;

(13) Have the power to acquire, construct, equip, and operate any and all facilities in or about the ports, harbors, river-rail terminals, barge terminals, and parks for industrial and commercial operations for the purpose of securing and developing industrial and commercial operations.

(14) Have the power to do any and all other acts and things of whatever nature consistent with this chapter necessary or incidental to the carrying out of the powers specified in this section and the accomplishment of the purposes of this chapter, whether or not specifically enumerated; and

(15) Be authorized to carry out the powers of the authorities and to accomplish the purposes of this chapter.

History. Acts 1961, No. 439, § 5; 1983, No. 623, § 2; A.S.A. 1947, § 21-1505.

14-185-110. Warehouse facilities — Proposals for lease or operation.

With regard to warehouse facilities used for commercial warehousing purposes mentioned § 14-185-108(a)(1)-(4), (6), (7), and (9)-(11), § 14-185-108(b), and § 14-185-109(2), (3), (12), and (13), the authority, prior to entering into a new lease of existing warehouse facilities or into a lease of new warehouse facilities, in whole or in part, or prior to operating warehouse facilities for these purposes, in whole or in part, shall first publicly solicit proposals for the leasing or operation of the warehouse facilities for these purposes on such terms as shall be

customary and usual in the commercial warehousing industry. The authority shall accept such proposal as is commercially reasonable and in the authority's best interest.

History. Acts 1961, No. 439, §§ 4, 5; 1983, No. 623, §§ 1, 2; A.S.A. 1947, §§ 21-1504, 21-1505.

14-185-111. Acquisition of rights-of-way and property.

(a) For the acquiring of rights-of-way and property necessary or desirable for the carrying out of their powers and for the accomplishment of the purposes of this chapter, port authorities shall have the right and power to acquire property by gift, by purchase, by negotiation, or by condemnation.

(b) If an authority determines to exercise the right of eminent domain, it may be exercised in the manner provided for taking private property for railroads as provided by §§ 18-15-1202 — 18-15-1207, in the manner provided by §§ 18-15-301 — 18-15-307, or in the manner provided by any other statutes enacted for the exercise of the power of eminent domain by the State of Arkansas, or by any of its officers, departments, agencies, or political subdivisions.

(c) Authorities may exchange any property acquired under this chapter for other property necessary or desirable in the carrying out of the powers of the authorities.

History. Acts 1961, No. 439, § 6; A.S.A. 1947, § 21-1506.

14-185-112. Condemnation of utility system prohibited.

Nothing in this chapter shall be construed to authorize any port authority to acquire by condemnation, or to issue bonds and use the proceeds of them to acquire by condemnation, a utility plant or utility distribution system, or any part of them, owned or operated by a regulated public utility for the purpose of operation by the acquiring authority.

History. Acts 1961, No. 439, § 17; A.S.A. 1947, § 21-1516.

14-185-113. Operation of terminal railroads.

(a)(1) Port authorities shall have the power and are authorized to acquire, own, lease, locate, install, construct, equip, hold, maintain, control, and operate at harbors, ports, and river-rail and barge terminals or lines of terminal railroads with necessary sidings, turnouts, spur branches, switches, yard tracks, bridges, trestles, and causeways.

(2) In connection with these lines and appurtenant thereto, authorities shall have the further right to lease, install, construct, acquire, own, maintain, control, and use any and every kind or character of

motive power and conveyances or appliances necessary or proper to carry passengers, goods, wares, and merchandise over, along, or upon the tracks of the terminal railroads or other conveyances.

(b)(1) Authorities shall have the right and power to make agreements as to scale of wages, seniority, working conditions, and related matters with locomotive engineers, firemen, switchmen, foremen, hostlers, and other employees engaged in the operation of the terminal railroads and the service and equipment pertinent to them.

(2) Authorities shall have the right and power with their terminal railroads to connect with or cross any other railroad upon payment of just compensation and to receive, deliver to, and transport the freight, passengers, and cars of common carrier railroads as though they were ordinary common carriers.

History. Acts 1961, No. 439, § 8; A.S.A. 1947, § 21-1508.

14-185-114. Dealings with federal government.

(a)(1) Port authorities are authorized to assign, transfer, lease, convey, grant, or donate to the federal government, or to the appropriate agency of it, any or all of their property, for use by the federal government, or the appropriate agency of it, for any purpose included within the purposes of this chapter.

(2) No such assignment, transfer, lease, conveyance, grant, or donation shall be made which would constitute an impairment of the covenants and obligations of any authority in connection with bonds or other certificates of indebtedness issued and outstanding by the authority or which would constitute an event of default under any indenture or similar instrument securing any indebtedness of any authority.

(3) Any assignment, transfer, lease, conveyance, grant, or donation, subject to the limitations specified, shall be upon such terms as the authority involved may deem advisable.

(b) In the event the federal government or the appropriate agency or department of it should decide to undertake the acquisition, construction, equipment, maintenance, or operation of any of the properties and facilities of any port authority and should decide to acquire the lands and properties necessarily needed in connection with it by condemnation or otherwise, authorities are further authorized to transfer and pay over to the federal government or to the appropriate agency of it such of the moneys belonging to the authorities as may be reasonably required by the federal government or the appropriate agency of it to meet and pay the amount of judgments in condemnation proceedings as may be rendered from time to time against the federal government or the appropriate agency of it or as may be reasonably necessary to permit and allow the federal government or the appropriate agency of it to acquire and become possessed of such lands and properties as are reasonably required for the acquisition, construction, and use of the properties and facilities referred to in this section.

History. Acts 1961, No. 439, § 7; A.S.A. 1947, § 21-1507.

14-185-115. Assistance by municipalities and counties.

(a)(1) It is determined that the ports, harbors, river-rail and barge terminals, and the facilities authorized to be acquired, constructed, reconstructed, extended, equipped, or improved by port authorities under this chapter are necessary for and useful in the securing and developing of industry in the State of Arkansas.

(2) Therefore, port authorities are authorized and empowered to contract and agree with the municipalities and the counties represented on their boards of directors concerning the making available by the municipalities and counties to the authorities of the proceeds of bonds issued by the municipalities and counties under the provisions of Arkansas Constitution, Amendment 49 [repealed] for the purpose of financially assisting the authorities to carry out the powers conferred upon them by this chapter and to accomplish the purposes of this chapter upon such terms as may be agreed upon by the municipalities and counties and the authorities consistent with the provisions of Arkansas Constitution, Amendment 49 [repealed].

(b)(1) In addition, municipalities and counties are expressly authorized to use and make available to the authorities, by way of donation, loan, or otherwise, any available revenues of the municipalities and counties for the purpose of financially assisting the authorities to carry out the powers conferred upon them by this chapter and to accomplish the purposes of this chapter.

(2) Any such available revenues so made available may be used by the authorities either alone or together with any other available funds and revenues for the accomplishment of the authorized purposes.

History. Acts 1961, No. 439, § 14; A.S.A. 1947, § 21-1514.

A.C.R.C. Notes. It is questionable whether Ark. Const. Amend. 49 is repealed in whole or whether only those provisions that conflict with Ark. Const. Amend. 62 are repealed by Ark. Const. Amend. 62.

14-185-116. Authority to borrow funds, issue bonds.

(a) Port authorities are authorized and empowered to enter into the necessary contracts for the borrowing of funds, pursuant to the provisions of this chapter, which they may determine will be required to carry out the powers of port authorities and to carry out the purposes of this chapter. In this regard, port authorities are authorized to issue bonds and to use the proceeds of them for the carrying out of the powers of port authorities and the accomplishment of the purposes of this chapter, either alone or together with other available funds and revenues.

(b) Any port authority is also authorized to issue revenue bonds under the provisions of this chapter for the purpose of applying a major portion of the proceeds of the revenue bonds, alone or with other revenues that may be pledged, to the acquisition of an investment

contract or contracts at a rate or rates of interest at least sufficient to provide for principal, premium, if any, and interest on the revenue bonds, as due, in consideration of the receipt of a portion of the proceeds for application by the port authority to one (1) or more of the purposes authorized by this chapter.

History. Acts 1961, No. 439, § 9; 1975 (Extended Sess., 1976), No. 1232, § 1; A.S.A. 1947, § 21-1509; Acts 1987, No. 46, § 1; reen. Acts 1987, No. 1017, § 1.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 1017, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-185-117. Bonds — Authority to issue.

This chapter shall be the sole authority required for the issuance of bonds under it and for the exercise of the powers of authorities established under this chapter. It shall not be necessary for the municipalities and counties represented on the boards of directors of authorities to take any action authorizing or approving the issuance of bonds or the exercise of any other powers by the authorities.

History. Acts 1961, No. 439, § 10; 1975 (Extended Sess., 1976), No. 1232, § 2; A.S.A. 1947, § 21-1510; reen. Acts 1987, No. 1017, § 2.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1017, § 2. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-185-118. Bonds — Covenants and agreements — Enforcement.

All covenants and agreements entered into and made by an authority shall be binding in all respects on the authority and the members of it and their successors from time to time in accordance with the terms of such covenants and agreements. All of those provisions shall be enforceable by mandamus or other appropriate proceedings at law or in equity.

History. Acts 1961, No. 439, § 10; 1975 (Extended Sess., 1976), No. 1232, § 2; A.S.A. 1947, § 21-1510; reen. Acts 1987, No. 1017, § 2.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1017, § 2. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-185-119. Bonds — Purposes.

Bonds may be issued from time to time for the acquisition, construction, and equipment of facilities and the reconstructing, extending, improving, equipping, or reequipping of facilities.

History. Acts 1961, No. 439, § 9; 1975 (Extended Sess., 1976), No. 1232, § 1; A.S.A. 1947, § 21-1509; reen. Acts 1987, No. 1017, § 1.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1017, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-185-120. Bonds — Principal amount.

Each bond issue shall be in the principal amount sufficient, together with other available funds, for the acquisition, construction, and equipment of facilities or the reconstruction, extension, improvement, equipment, or reequipment of facilities, all costs of issuing bonds, the amount necessary for a reserve, if deemed desirable by the authority issuing the bonds, the amount necessary to provide for debt service on the bonds until revenues for the payment of them are available, and any cost of whatever nature necessarily incidental to them.

History. Acts 1961, No. 439, § 9; 1975 (Extended Sess., 1976), No. 1232, § 1; A.S.A. 1947, § 21-1509; reen. Acts 1987, No. 1017, § 1.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1017, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-185-121. Bonds — Resolution or trust indenture generally.

The authority issuing the bonds, by the resolution or indenture, among other things, may control the subsequent issuance of additional bonds and the priority, between and among issues, of the pledge of revenues and of the mortgage lien, provide for the use of surplus pledged revenues, and provide for the creation of special trust funds to be maintained in such banks as the authority issuing the bonds may select. The moneys in these special trust funds shall be secured and disbursed as determined by the authority. The special trust funds may, without limitation, include a bond fund, a depreciation fund, an operation and maintenance fund, and such reserve funds as the authority issuing the bonds may determine to be in the best interests of the authority in accomplishing the purposes of this chapter.

History. Acts 1961, No. 439, § 10; 1975 (Extended Sess., 1976), No. 1232, § 2; A.S.A. 1947, § 21-1510; reen. Acts 1987, No. 1017, § 2.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1017, § 2. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-185-122. Bonds — Authorizing resolution.

(a) Each issue of bonds shall be authorized by resolution of the authority issuing the bonds.

(b) Priority, between and among successive issues, of the pledge of revenues and mortgage lien may be controlled by the resolutions authorizing the issuance of bonds under this chapter.

History. Acts 1961, No. 439, § 9; 1970 (Ex. Sess.), No. 59, § 1; 1975 (Extended Sess., 1976), No. 1232, § 1; 1981, No. 425, § 34; A.S.A. 1947, § 21-1509; reen. Acts 1987, No. 1017, § 1.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1017, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-185-123. Bonds — Terms and conditions.

(a) As the authorizing resolution may provide, the bonds may:

(1) Be coupon bonds payable to bearer;

(2) Be registered as to principal or as to principal and interest, or be coupon bonds subject to registration as to principal or as to principal and interest;

(3) Be in one (1) or more series;

(4) Bear such date or dates;

(5) Mature at such time or times, not exceeding thirty-five (35) years from their respective dates;

(6) Bear interest at such rate or rates;

(7) Be in such form;

(8) Be executed in such manner;

(9) Be payable in such medium of payment at such place or places;

(10) Be subject to such terms of redemption; and

(11) Contain such terms, covenants, and conditions including, without limitation, those pertaining to:

(A) The custody and application of the proceeds of the bonds;

(B) The collection and disposition of revenues;

(C) The maintenance and investment of various funds and reserves;

(D) The nature and extent of the security;

(E) The rights, duties, and obligations of the authority issuing the bonds and of the trustee for the holders or registered owners of the bonds; and

(F) The rights of the holders or registered owners of the bonds.

(b) Bonds issued under this chapter shall have all of the qualities of negotiable instruments under the negotiable instruments laws of the State of Arkansas, subject to the provisions of this section pertaining to registration.

History. Acts 1961, No. 439, § 9; 1970 (Ex. Sess.), No. 59, § 1; 1975 (Extended Sess., 1976), No. 1232, § 1; 1981, No. 425, § 34; A.S.A. 1947, § 21-1509; reen. Acts 1987, No. 1017, § 1.

A.C.R.C. Notes. This section was reen-

acted by Acts 1987, No. 1017, § 1. Acts 1987, No. 834 provided that 1987 legislative reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-185-124. Bonds — Trust indenture.

(a) Each resolution of an authority authorizing the issuance of bonds may provide for the execution of an indenture defining the rights of the holders and registered owners of the bonds and providing for the appointment of a trustee for the holders and registered owners of the bonds.

(b) The indenture may control the priority, between and among successive issues, of the pledge of revenues and mortgage lien and may control any other terms, covenants, and conditions that are deemed desirable, including without limitation, those pertaining to:

(1) The custody and application of the proceeds of the bonds;

(2) The collection and disposition of revenues;

(3) The maintenance of various funds and reserves;

(4) The nature and extent of the security;

(5) The rights, duties, and obligations of the authority and the trustee for the holders and registered owners of the bonds; and

(6) The rights of the holders and registered owners of the bonds.

History. Acts 1961, No. 439, § 9; 1975 (Extended Sess., 1976), No. 1232, § 1; A.S.A. 1947, § 21-1509; reen. Acts 1987, No. 1017, § 1.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1017, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-185-125. Bonds — Contents.

It shall be plainly stated on the face of each bond issued under this chapter that it has been issued under the provisions of this chapter.

History. Acts 1961, No. 439, § 10; 1975 (Extended Sess., 1976), No. 1232, § 2; A.S.A. 1947, § 21-1510; reen. Acts 1987, No. 1017, § 2.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1017, § 2. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-185-126. Bonds — Sale.

Bonds issued under this chapter may be sold for such price including, without limitation, sale at a discount and in such manner as the authority issuing the bonds may determine by resolution.

History. Acts 1961, No. 439, § 9; 1970 (Ex. Sess.), No. 59, § 1; 1975 (Extended Sess., 1976), No. 1232, § 1; 1981, No. 425, § 34; A.S.A. 1947, § 21-1509; reen. Acts 1987, No. 1017, § 1.

A.C.R.C. Notes. This section was reen-

acted by Acts 1987, No. 1017, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-185-127. Bonds, coupons — Execution.

(a)(1) Bonds issued under this chapter may be executed by the facsimile signature of the chairman of the authority issuing the bonds and by the manual signature of the secretary of the authority issuing the bonds and sealed with the seal of the authority issuing the bonds.

(2) The coupons attached to the bonds may be executed by the facsimile signature of the chairman of the authority issuing the bonds.

(b) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of the bonds or coupons, their signatures shall, nevertheless, be valid and sufficient for all purposes.

History. Acts 1961, No. 439, § 9; 1975 (Extended Sess., 1976), No. 1232, § 1; A.S.A. 1947, § 21-1509; reen. Acts 1987, No. 1017, § 1.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1017, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-185-128. Bonds — Conversion.

Bonds issued under this chapter may be sold with the privilege of conversion to an issue bearing a lower rate or rates of interest upon such terms that the authority issuing the bonds receive no less and pay no more than it would receive and pay if the bonds were not converted. The conversion shall be subject to the approval of the authority issuing the bonds.

History. Acts 1961, No. 439, § 9; 1970 (Ex. Sess.), No. 59, § 1; 1975 (Extended Sess., 1976), No. 1232, § 1; 1981, No. 425, § 34; A.S.A. 1947, § 21-1509; reen. Acts 1987, No. 1017, § 1.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1017, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-185-129. Bonds — Issues.

There may be separate issues involving different facilities and there may be successive issues involving the same facilities.

History. Acts 1961, No. 439, § 9; 1975 (Extended Sess., 1976), No. 1232, § 1; A.S.A. 1947, § 21-1509; reen. Acts 1987, No. 1017, § 1.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1017, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-185-130. Bonds — General or special obligations.

Bonds issued under this chapter shall be general or special obligations only of the port authority issuing the bonds. In no event shall they constitute an indebtedness for which the faith and credit of the State of Arkansas or the faith and credit of any municipality or county, or other political subdivision of the State of Arkansas or any of their revenues are pledged.

History. Acts 1961, No. 439, § 10; 1975 (Extended Sess., 1976), No. 1232, § 2; A.S.A. 1947, § 21-1510; Acts 1987, No. 46, § 2; reen. Acts 1987, No. 1017, § 2.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1017, § 2. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-185-131. Bonds — Liability.

No member of any port authority shall be personally liable on the bonds or for any damages sustained by anyone in connection with the contracts with the holders and registered owners of the bonds or the construction, reconstruction, extension, improvement, or equipping of buildings or facilities unless the member shall have acted with a corrupt intent.

History. Acts 1961, No. 439, § 10; 1975 (Extended Sess., 1976), No. 1232, § 2; A.S.A. 1947, § 21-1510; Acts 1987, No. 46, § 2; reen. Acts 1987, No. 1017, § 2.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1017, § 2. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-185-132. Bonds — Pledge of revenues.

(a) The principal of, premium, if any, or interest on, and trustee's and paying agent's fees in connection with each issue of bonds issued by the port authority under this chapter shall be secured by a pledge of, and shall be payable from, the revenues derived from the lands, buildings, or facilities acquired, constructed, reconstructed, extended, improved, or equipped, in whole or in part, with the proceeds of the bonds of the particular issue.

(b) In addition, the port authority issuing the bonds is authorized to pledge to, and use for the payment of the principal of, premium, if any, or interest on, and trustee's and paying agent's fees in connection with a particular issue of bonds, revenues derived from other lands, buildings, or facilities owned or held by the port authority, and an investment contract or contracts entered into by the port authority for the purpose of paying and securing the bonds, and any revenues to be derived from the contract or contracts.

History. Acts 1961, No. 439, § 10; 1975 (Extended Sess., 1976), No. 1232, § 2; A.S.A. 1947, § 21-1510; Acts 1987, No. 46, § 2; reen. Acts 1987, No. 1017, § 2.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1017, § 2. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-185-133. Refunding bonds.

(a)(1) Bonds may be issued under this chapter for the purpose of refunding any bonds theretofore issued under this chapter.

(2)(A) Refunding bonds may be issued alone or combined with bonds issued under this chapter into a single issue for the purpose of refunding outstanding bonds, acquiring lands, and constructing and equipping buildings or facilities or reconstructing, extending, improving, or reequipping existing buildings or facilities.

(B)(i) When refunding bonds are issued, the bonds may be either sold or delivered in exchange for the outstanding bonds being refunded.

(ii) If sold, the proceeds may either be applied to the payment of the bonds being refunded, or the proceeds may be deposited in escrow for the retirement of them.

(b)(1) All refunding bonds shall, in all respects, be authorized, issued, and secured in the manner provided for other bonds issued under this chapter and shall have all the attributes of such bonds.

(2) The resolution or indenture authorizing or securing refunding bonds may provide that the bonds shall have the same priority of lien on the revenues pledged for their payment and on the property mortgaged as security for their payment as was enjoyed by the bonds refunded by them.

History. Acts 1961, No. 439, § 11; A.S.A. 1947, § 21-1511.

14-185-134. Bonds — Tax exemption.

(a) Bonds issued under the provisions of this chapter shall be exempt from all state, county, and municipal taxes.

(b) This exemption shall include income, inheritance, and estate taxes.

History. Acts 1961, No. 439, § 12; A.S.A. 1947, § 21-1512.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Ark. Const. Amend. 57, § 1 and § 26-3-302. Arkansas Const. Amend. 57, § 1 provides that the General Assembly may classify intangible personal property for assessment at lower percentages of value than other property and may exempt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempts all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

14-185-135. Bonds as legal investment.

Bonds issued under this chapter shall be eligible to secure deposits of all public funds and shall be legal for the investment of bank, insurance company, and retirement funds.

History. Acts 1961, No. 439, § 13; A.S.A. 1947, § 21-1513.

14-185-136. Bonds — Mortgage lien.

(a) The resolution or indenture referred to in §§ 14-185-122 and 14-185-124 may, but need not, impose a foreclosable mortgage lien upon the facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of bonds issued under this chapter.

(b) The nature and extent of the mortgage lien may be controlled by the resolution or indenture including, without limitation, provisions pertaining to:

(1) The release of all or part of the land, building, or facilities from the mortgage lien; and

(2) The priority of the mortgage lien in the event of successive bond issues as authorized by this chapter.

(c) The resolution or indenture authorizing or securing the bonds may authorize any holder or registered owner of bonds issued under the provisions of this chapter or a trustee on behalf of all holders and registered owners, either at law or in equity, to enforce the mortgage lien and, by proper suit, to compel the performance of the duties of the officials of the authority set forth in this chapter and set forth in the resolution or indenture authorizing or securing the bonds.

History. Acts 1961, No. 439, § 9; 1975 (Extended Sess., 1976), No. 1232, § 1, A.S.A. 1947, § 21-1509; reen. Acts 1987, No. 1017, § 1.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1017, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-185-137. Bonds — Default — Receiver.

(a) In the event of a default in the payment of the principal of or interest on any bonds issued under this chapter, any court having jurisdiction may appoint a receiver to take charge of the land, buildings, or facilities upon which there is a mortgage lien securing the bonds.

(b) The receiver shall have the power to operate and maintain the land, buildings, or facilities and to charge and collect rates or rents with reference to them. These rents shall be sufficient to provide for the payment of the principal of and interest on bonds, after providing for the payment of any costs of receivership and operating expenses of the land, buildings, or facilities and to apply the income and revenues

derived from them in conformity with this chapter and the resolution or indenture authorizing or securing the bonds.

(c) When the default has been cured, the receivership shall be ended and the properties returned to the authority issuing the bonds.

(d) The relief afforded by this section shall be construed to be in addition and supplemental to the remedies that may be afforded the trustee for the bondholders and the bondholders in the resolution or indenture authorizing or securing the bonds and shall be so granted and administered as to accord full recognition to priority rights of bondholders as to the pledge of revenues from, the mortgage lien on, the land, buildings, or facilities as specified in and fixed by the resolution or indenture authorizing or securing successive bond issues.

History. Acts 1961, No. 439, § 9; 1975 (Extended Sess., 1976), No. 1232, § 1; A.S.A. 1947, § 21-1509; reen. Acts 1987, No. 1017, § 1.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1017, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

CHAPTER 186

HARBORS AND PORT FACILITIES GENERALLY

SUBCHAPTER.

1. General Provisions.
2. Municipal Port Authorities.
3. Municipal Port Authority Facilities.
4. Joint Operation of Ports by Municipalities and Counties.

RESEARCH REFERENCES

C.J.S. 63 C.J.S., Mun. Corp., § 1055.
64 C.J.S., Mun. Corp., § 1812 et seq.

Subchapter 1 — General Provisions

SECTION.

14-186-101. Powers of city council generally.

Cross References. General authority to establish wharves and landing places, § 14-54-601.

Local government reserve funds, § 14-73-101 et seq.

Municipal wharf improvement districts, § 14-187-101 et seq.

Effective Dates. Acts 1875, No. 1, § 95: effective on passage.

14-186-101. Powers of city council generally.

(a)(1) A city council shall have power to:

(A) Establish, construct, and regulate landing places, levees, wharves, docks, piers, and basins;

(B) Fix the rates of landing, wharfage, and dockage; and

(C) Use, for the purposes indicated, any public landing or any property belonging to or under the control of the city.

(2) For these purposes, the council shall have the use and control of the shore or bank of any lake or river, not the property of individuals, to the extent and in the manner that the state can grant such use or control.

(b)(1) The council shall have the power to:

(A) Appoint, or to provide that the qualified voters shall elect, harbormasters, wharfmasters, port wardens, and other officers usual or proper for the regulation of the navigation, trade, or commerce of the city;

(B) Define their duties and powers; and

(C) Fix their fees and compensation.

(2) Copies of the examination and surveys and of the proceedings of any port warden in the usual discharge of the duties of this office, certified under his hand, shall be prima facie evidence of the facts stated in them.

History. Acts 1875, No. 1, § 8, p. 1; C. & M. Dig., §§ 7609-7612; Pope's Dig., §§ 9704-9706, 9722; A.S.A. 1947, § 19-2701.

Subchapter 2 — Municipal Port Authorities

SECTION.
14-186-201. Definitions.
14-186-202. Construction.
14-186-203. Creation of authority — Members.
14-186-204. Authority — Purposes.
14-186-205. Authority — Activities in which city or town may engage.
14-186-206. Jurisdiction.
14-186-207. Powers generally.
14-186-208. Warehouse facilities — Proposals for lease or operation.
14-186-209. Operation of terminal railroads.
14-186-210. Acquisition of rights-of-way and property.
14-186-211. Exemptions for property.
14-186-212. Exchange of property, etc.
14-186-213. Transfer of property or money to federal government.
14-186-214. Deposit and payment of funds.
14-186-215. Periodic financial statement.

Effective Dates. Acts 1947, No. 167, § 15: approved Mar. 5, 1947. Emergency clause provided: "This act being necessary for the public health, peace and safety, an emergency is hereby declared to exist and the same shall be in full force and effect from and after its passage."

Acts 1983, No. 622, § 7. Mar. 22, 1983. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that the proper, economical and efficient acquisition, construction, equipment and operation of the Ports, Harbors, Riv-

er-rail Terminals, Barge Terminals and Parks for industrial and commercial operations in this State now or hereafter in existence, is essential to the economic and overall benefit and welfare of the State and its inhabitants and the provisions hereof clarifying and expanding the purposes and powers of Authorities are necessary for the prompt and full realization of such necessary and intended benefits. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1991, No. 735, § 5: Mar. 25, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that the present law provides that the mayor of the city or incorporated town creating a port authority shall be a member of the governing board and shall be chairman; that the law should provide that the mayor may be a member of the board; and that this act would provide an option for the mayor to serve on the board and serve as chairman or to not serve on the board and appoint another member to be chairman. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1045, § 5: Apr. 2, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is an immediate need to facilitate the disbursement of funds by municipal port authorities. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

14-186-201. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Governing body" means the council, board of directors, or other like body in which the legislative functions of a city or incorporated town are vested;

(2) "Facilities" means real property, personal property, or mixed property of any and every kind including, without limitation, rights-of-way, utilities, materials, equipment, fixtures, machinery, furniture, furnishings, buildings, and other improvements of every kind;

(3) "Acquire" means to obtain, at any time, by gift, purchase, or other arrangement, any project, or any portion of a project, whether theretofore constructed and equipped, theretofore partially constructed and equipped, or being constructed and equipped at the time of acquisition, for such consideration and pursuant to such terms and conditions as the municipal port authority shall determine;

(4) "Construct" means to acquire or build, in whole or in part, in such manner and by such method, including contracting therefor, and if the latter, by negotiation or bidding upon such terms and pursuant to such advertising, as determined by the municipal port authority, under the circumstances existing at the time, will most effectively serve the purposes of this subchapter;

(5) "Equip" means to install or place in, or on, any building or structure equipment of any and every kind, whether or not affixed,

including, without limitation, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture, furnishings, and personal property of every kind;

(6)(A) "Lease" means to lease for such rentals, for such periods, and upon such terms and conditions as the municipal port authority shall determine. It also shall mean the granting of such extension and purchase options for such prices and upon such terms and conditions as the authority shall determine.

(B) With regard to warehouse facilities used for commercial warehousing purposes, the municipal port authority, prior to entering into a new lease of existing warehouse facilities or into a lease of new warehouse facilities, in whole or in part, or prior to operating warehouse facilities for these purposes, in whole or in part, shall first publicly solicit proposals for the leasing or operation of the warehouse facilities for these purposes on such terms as shall be customary and usual in the commercial warehousing industry, and the authority shall accept such proposal as is commercially reasonable and in the authority's best interest;

(7) "Sell" means to sell for such price, in such manner, and upon such terms as the municipal port authority shall determine including, without limitation, public or private sale and, if public, pursuant to such advertisement as the authority shall determine, and to sell for cash or on credit, payable in lump sum or in such installments as the authority shall determine, and if on credit, with or without interest and at such rate or rates as the authority may determine;

(8) "Person" means any natural person, partnership, corporation, association, organization, business trust, and public or private person or entity;

(9) "Port authority" or "authority" means a municipal port authority established pursuant to the provisions of this subchapter.

History. Acts 1947, No. 167, § 16, as added by Acts 1983, No. 622, § 3; A.S.A. 1947, § 19-2731.1.

Publisher's Notes. Acts 1983, No. 622, § 5, provided: "This act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes hereof."

14-186-202. Construction.

(a) It is intended that the provisions of this subchapter shall be liberally construed to accomplish the purposes provided for, or intended to be provided for, in this subchapter.

(b) Where strict construction would result in the defeat of the accomplishment of any of the actions authorized in this subchapter and a liberal construction would permit or assist in the accomplishment of them, the liberal construction shall be chosen.

History. Acts 1947, No. 167, § 12; A.S.A. 1947, § 19-2731.

14-186-203. Creation of authority — Members.

(a)(1) The municipal port authority shall be created by ordinance of the governing body of the city or town and shall be an instrumentality of the city or town creating the authority.

(2)(A) Any city or incorporated town in the State of Arkansas shall have the right, by ordinance, to create and set up a port authority.

(B) The authority shall consist of and be governed by a board of five (5) members, one (1) of whom may be the mayor of the city or incorporated town creating the authority.

(i) If the mayor is a member of the port authority, the mayor shall be chairman.

(ii) If the mayor is not a member of the port authority, the chairman shall be elected by the members of the authority.

(b)(1) The members shall be appointed by the mayor of the city or town creating the authority and shall be qualified electors residing in the city or town or within the county in which the city or town is located.

(2)(A) The members of the board shall be appointed for a period of one (1), two (2), three (3), four (4), and five (5) years, respectively, so that the term of one (1) member shall expire each year after the creation of the municipal port authority.

(B)(i) Upon the termination of office of each member, his successor shall be appointed for a term of five (5) years and shall serve until his successor shall have been appointed and qualified.

(ii) In the event of a vacancy, however caused, the successor shall be appointed by the mayor for the unexpired term.

(3)(A) The board shall elect one (1) of their number as vice chairman and shall elect a secretary and a treasurer who need not necessarily be members of the board.

(B) The authority shall require a surety bond of the treasurer appointee in such amount as the authority may fix, and the premiums on it shall be paid by the authority as a necessary expense of the authority.

(4) The board shall meet upon the call of its chairman. A majority of all of its members shall constitute a quorum for the transaction of business.

(5) The members of the authority shall receive such compensation for their services as shall be determined and prescribed by the ordinance setting up and creating the authority.

History. Acts 1947, No. 167, §§ 1, 2, 9; 1979, No. 910, § 1; 1983, No. 622, § 1; A.S.A. 1947, §§ 19-2720, 19-2721, 19-2728; Acts 1991, No. 735, § 1.

Publisher's Notes. Acts 1983, No. 622, § 5, provided: "This act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes hereof."

Cross References. Self-insured fidelity bond programs, § 21-2-701 et seq.

14-186-204. Authority — Purposes.

(a) The authority may be created to accomplish the following general purposes:

(1) To establish, acquire, develop, improve, or maintain harbors, ports, river-rail terminals, barge terminals, parks for industrial and commercial operations, and related improvements and facilities in or near any city or town in the State of Arkansas as it may deem feasible for the expeditious and efficient handling of commerce, by water, roadway, highway, air, or other, from and to any other part of the State of Arkansas or any other states and foreign countries;

(2) To acquire, purchase, construct, install, equip, lease, maintain, own, hold, develop, use, control, and improve lands and facilities of whatever nature necessary or desirable in connection with the establishing, developing, improving, and maintaining the ports, harbors, river-rail terminals, barge terminals, and parks for industrial and commercial operations, including, without limitation, buildings, warehouses, utilities, and the improvement of portions of waterways, highways or roadways, and other facilities not within the exclusive jurisdiction of the federal government;

(3) To foster and stimulate the shipment of freight and commerce, by water, roadway, highway, air, or other, and industrial and commercial development at and through the ports, harbors, river-rail terminals, barge terminals, parks for industrial and commercial operations and industries, and businesses located on them, whether originating within or without the State of Arkansas, including the investigation, handling, and dealing with matters pertaining to all transportation rates and rate structures affecting them.

(4) To cooperate with the federal government, the State of Arkansas, and any agency, department, corporation, or instrumentality of either of them in the development, improvement, maintenance, and use of the harbors, ports, river-rail terminals, barge terminals, parks for industrial and commercial operations and industries, and businesses located in them in connection with the furtherance of the operation and needs of the United States, the State of Arkansas, the city or town, and any such industry or business;

(5) To accept funds from any sources and to use them in such manner, within the purposes of the authority, as shall be stipulated by the source from which received, and

(6) To act as agent or instrumentality of the city or incorporated town in any matter coming within the general purposes of the authority;

(7) To act as agent for the federal government or any agency, department, corporation, or instrumentality of it, and for the State of Arkansas and any agency, department, instrumentality, or political subdivision of it, in any matter coming within the purposes or powers of the authority;

(8) To acquire, construct, equip, maintain, develop, and improve facilities at the ports, harbors, river-rail terminals, barge terminals,

and parks for industrial and commercial operations to secure and develop industry, business, and commerce.

(9) To sell, lease, contract concerning, or permit the use of all, or any part, of the facilities so acquired, constructed, and equipped to any person for industrial or commercial activities;

(10) In general, to do and perform any act or function which may tend to or be useful toward the development and improvement of harbors, ports, river-rail terminals, barge terminals, and parks for industrial and commercial operations and to further the movement of waterborne and other forms of commerce, foreign and domestic, through the harbors, ports, river-rail terminals, barge terminals, and parks for industrial and commercial operations.

(b) The enumeration of these purposes shall not limit or circumscribe the broad objectives of developing to the utmost the port and industrial and commercial development possibilities of the State of Arkansas.

History. Acts 1947, No. 167, § 2; 1983, No. 622, § 1; A.S.A. 1947, § 19-2721.

Publisher's Notes. Acts 1983, No. 622, § 5, provided: "This act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes hereof."

14-186-205. Authority — Activities in which city or town may engage.

Through the municipal port authority created under § 14-186-203, any city or incorporated town may engage in promoting, developing, acquiring, constructing, equipping, maintaining, and operating harbors, ports, river-rail terminals, barge terminals, parks for industrial and commercial operations and improvements, and facilities incident to them, within or without the corporate limits of the city or town, including the acquisition, construction, maintenance, and operation of such harbors, ports, river-rail terminals, barge terminals, parks for industrial and commercial operations, improvements, and facilities including, without limitation, highways, railroads, bridges, utilities, and other facilities necessary or essential for the proper operation of them, subject to the purposes and restrictions set forth in § 14-186-204.

History. Acts 1947, No. 167, § 2; 1983, No. 622, § 1; A.S.A. 1947, § 19-2721.

Publisher's Notes. Acts 1983, No. 622, § 5, provided: "This act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes hereof."

14-186-206. Jurisdiction.

The jurisdiction of a municipal port authority in any harbors, ports, or river-rail and barge terminals within the state shall extend over the waters and shores of the harbors or ports.

History. Acts 1947, No. 167, § 8; A.S.A. 1947, § 19-2727.

CASE NOTES

Federal Authority.

If the power of the state and that of the federal government come in conflict, the power of the federal government will control; however, § 10 of the federal River and Harbor Act of 1899 (33 U.S.C. § 403) was not intended to override the authority of the state to put its veto upon the placing of obstructing structures in navigable waters within a state, and both state and federal approval are necessary in such case. Eagle Int'l, Inc. v. City of Crossett Port Auth., 27 Ark. App. 36, 766 S.W.2d 28 (1989).

14-186-207. Powers generally.

In order to enable any city or incorporated town to carry out the purposes of this subchapter, a municipal port authority shall:

(1) Have the powers of a body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal;

(2) Be authorized and empowered to rent, improve, develop, operate, maintain, lease, buy, own, acquire, mortgage, otherwise encumber, sell, and dispose of, and otherwise deal with such real, personal, or mixed property as the authority may deem proper, necessary, or desirable to carry out the purposes and provisions of this subchapter, all or any of them.

(3) Be authorized and empowered to acquire, construct, maintain, equip, and operate any wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses, and other structures and any and all facilities needed for the convenient use of them in aid of commerce, whether by roadway, highway, water, air, or other, and industrial and commercial operations involving water, waterways, rail, highways, roadways, pipelines, air, or other transportation sources, including, without limitation, the dredging of approaches, the construction of utilities, belt line roads and highways and bridges and causeways, and other improvements and facilities necessary or useful, and shipyards, shipping facilities, terminal railroad and transportation facilities useful and convenient;

(4) Appoint, employ, and dismiss at pleasure such employees as may be selected by the authority board, and to fix and pay their compensation;

(5) Establish an office for the transaction of its business at such place as, in the opinion of the authority, shall be advisable or necessary in carrying out the purposes of this subchapter and the ordinances of any city or town in connection with it;

(6) Be authorized and empowered to create and operate such agencies and departments as the board may deem necessary or useful for the furtherance of any of the purposes of this subchapter;

(7) Be authorized and empowered to pay all necessary costs and expenses involved in and incident to the formation and organization of the authority, and incident to the administration and operation of it, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this subchapter;

(8) Be authorized and empowered to act as agent for the federal government, the State of Arkansas, or any agency, department, corporation, or instrumentality of either of them in any matter coming within the purposes or powers of the authority;

(9) Have the power to adopt, alter, or repeal its own bylaws, rules, and regulations consistent with this subchapter governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of such committees, and the function of them, as the authority may deem necessary or expedient in facilitation of its business;

(10) Be authorized and empowered to sell, lease, or contract concerning any of its docks, wharves, piers, quays, elevators, compresses, refrigeration storage plants, warehouses, industrial or commercial plants and facilities, and other improvements and facilities of whatever nature and to permit the use of any of these facilities by any person engaging in any industrial or commercial activity.

(11) Be authorized and empowered to acquire, construct, equip, and operate any and all facilities in or about the ports, harbors, river-rail terminals, barge terminals, and parks for the purpose of securing and developing industrial and commercial operations;

(12) Be authorized and empowered to do any and all other acts and things authorized in this subchapter or required to be done, whether or not included in the general powers mentioned in this section; and

(13) Be authorized and empowered to do any and all things necessary to accomplish the purposes of this subchapter.

History. Acts 1947, No. 167, § 3; 1983, No. 622, § 2; A.S.A. 1947, § 19-2722.

Publisher's Notes. Acts 1983, No. 622, § 5, provided: "This act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes hereof."

14-186-208. Warehouse facilities — Proposals for lease or operation.

With regard to warehouse facilities used for commercial warehousing purposes mentioned in § subdivisions (1)-(4) and (8)-(10) of § 14-186-204(a) and § 14-186-204(b), and subdivisions (2), (3), and (10)-(13) of § 14-186-207, the authority, prior to entering into a new lease of existing warehouse facilities or into a lease of new warehouse facilities, in whole or in part, or prior to operating warehouse facilities for these purposes, in whole or in part, shall first publicly solicit proposals for the leasing or operation of the warehouse facilities for these purposes on such terms as shall be customary and usual in the commercial warehousing industry, and the authority shall accept such proposal as is commercially reasonable and in the authority's best interest.

History. Acts 1947, No. 167, §§ 2, 3; 1983, No. 622, §§ 1, 2; A.S.A. 1947, §§ 19-2721, 19-2722.

Publisher's Notes. Acts 1983, No. 622, § 5, provided: "This act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes hereof."

14-186-209. Operation of terminal railroads.

(a) A municipal port authority shall have the power and authority to acquire, own, lease, locate, install, construct, equip, hold, maintain, control, and operate at harbors, ports, and river-rail and barge terminals a line of terminal railroads with necessary sidings, turn outs, spurs, branches, switches, yard tracks, bridges, trestles, and causeways; and in connection therewith and appurtenant thereto, shall have the further right to lease, install, construct, acquire, own, maintain, control, and use any and every kind or character of motive power and conveyances or appliances necessary or proper to carry passengers, goods, wares, and merchandise over, along, or upon the tracks of the railroads or other conveyances.

(b)(1) The authority shall have the right and authority to make agreements as to scale of wages, seniority, and working conditions with locomotive engineers, locomotive firemen, switchmen, switch engine foremen, and hostlers engaged in the operation of the terminal railroads provided for in this section, and the service and equipment pertinent to them.

(2) Should the authority exercise the power given in this section, then, in such event, it shall be the duty of the authority to make such agreements with the employees specified, in accordance with the act of Congress known as the Railway Labor Act, as amended, to the end that the same agreements as to seniority and working conditions will obtain as to the employees and that the standard rate of pay be provided, as are in force relative to like employees of interstate railroads operating in the same territory with terminal railroads authorized by this section.

(c) The authority shall have the right and power with its terminal railroads to connect with or cross any other railroad upon payment of just compensation and to receive, deliver to, and transport the freight, passengers, and cars of common carrier railroads as though it were an ordinary common carrier.

History. Acts 1947, No. 167, § 7; A.S.A. 1947, § 19-2726.

U.S. Code. The Railway Labor Act, referred to in this section, is codified as 45 U.S.C. §§ 151 et seq.

14-186-210. Acquisition of rights-of-way and property.

(a) For the acquiring of rights-of-way and property necessary for the construction of terminal railroads and structures, including railroad crossings, airports, seaplane bases, naval bases, wharves, piers, ships, docks, quays, elevators, compresses, refrigeration storage plants, warehouses, and other riparian and littoral terminals and structures and approaches to them and transportation facilities needful for the convenient use of them, and belt line roads and highways and causeways and bridges and other bridges and causeways, a municipal port authority shall have the right and power to acquire them by purchase, by negotiation, or by condemnation.

(b)(1) Should it elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the authority, and it may proceed in the manner provided by the general laws of the State of Arkansas for the procedure by any county, municipality, or authority organized under the laws of this state, or by the State Highway and Transportation Department, or by railroad corporations, or in any other manner provided by law, as the authority may, in its discretion, elect.

(2) The power of eminent domain shall not apply to property of persons, state agencies, or corporations already devoted to public use.

History. Acts 1947, No. 167, § 4; A.S.A. 1947, § 19-2723.

CASE NOTES

Exceptions.

The power of eminent domain granted to municipalities under this section does not allow the acquisition of private property for industrial sites or parks. City of Little Rock v. Raines, 241 Ark. 1071, 411 S.W.2d 486 (1967).

14-186-211. Exemptions for property.

The property of a municipal port authority shall not be subject to any taxes or assessments on it.

History. Acts 1947, No. 167, § 3; 1983, No. 622, § 2; A.S.A. 1947, § 19-2722.

Publisher's Notes. Acts 1983, No. 622, § 5, provided: "This act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes hereof."

14-186-212. Exchange of property, etc.

(a) A municipal port authority may exchange any property acquired under the authority of this subchapter for other property usable in carrying out the power conferred by this subchapter.

(b) The authority may also remove from lands needed for its purposes, and reconstruct on other locations, buildings, terminals, railroads, or other structures, upon the payment of just compensation if, in its judgment, it is necessary or expedient so to do in order to carry out any of its plans for port, harbor, or river-rail or barge terminal development, under the authorization of this subchapter.

History. Acts 1947, No. 167, § 5; A.S.A. 1947, § 19-2724.

14-186-213. Transfer of property or money to federal government.

(a) A municipal port authority is authorized to assign, transfer, lease, convey, grant, or donate to the federal government, or to the appropriate agency or department of it, any, or all, of the property of the authority for any use by the federal government for any purpose included within the general purposes of this subchapter, as provided in this subchapter, such assignments, transfer, lease, conveyance, grant, or donation to be made upon such terms as the authority board may deem advisable.

(b) In the event the federal government should decide to undertake the acquisition, construction, equipment, maintenance, or operation of the airports, seaplane bases, naval bases, wharves, piers, ships, refrigerator storage plants, warehouses, elevators, compresses, docks, shipyards, shipping and transportation facilities referred to in this section including terminal railroads, roads, highways, causeways, or bridges, and should itself decide to acquire the lands and properties necessarily needed in connection with them, by condemnation or otherwise, the authority is further authorized to transfer and pay over to the federal government, or to the appropriate agency or department of it, such of the moneys belonging to the authority as may be found, needed, or reasonably required by the federal government to meet and pay the amount of judgments or condemnation, including costs, if any are taxed on them, as may be rendered from time to time against the federal government or its appropriate agency, or as may be reasonably necessary to permit and allow the federal government, or its appropriate agency, to acquire and become possessed of such lands and properties as are reasonably required for the construction and use of the facilities referred to in this section.

History. Acts 1947, No. 167, § 6; A.S.A. 1947, § 19-2725.

14-186-214. Deposit and payment of funds.

(a) All municipal port authority funds shall be deposited in banks to be designated by the authority.

(b) No funds of the authority shall be disbursed except for a purpose authorized by this subchapter and only when the account or expenditure for which it is to be given in payment has been approved by the authority.

History. Acts 1947, No. 167, § 10; A.S.A. 1947, § 19-2729; Acts 1997, No. 1045, § 1.

Amendments. The 1997 amendment rewrote (b).

14-186-215. Periodic financial statement.

(a) At least once in each year, a municipal port authority shall publish a report. It shall be published one (1) time in some newspaper published in the city or incorporated town where the authority is located. If no paper exists in the city or town creating such authority, the report may be published in any newspaper published in the county where the authority is located. It shall show a complete financial statement of all moneys received and disbursed by the authority during the preceding year.

(b) The statement shall show:

(1) The several sources from which funds were received;

(2) The balance on hand at the time of publishing the statement; and

(3) The complete financial condition of the authority.

History. Acts 1947, No. 167, § 11; A.S.A. 1947, § 19-2730.

Subchapter 3 — Municipal Port Authority Facilities

SECTION.
14-186-301. Legislative intent.
14-186-302. Definitions.
14-186-303. Powers of municipality generally.
14-186-304. Power of eminent domain.
14-186-305. Funding of facilities.
14-186-306. Issuance of revenue bonds generally.
14-186-307. Sale and execution of bonds.
14-186-308. Payment of bonds.
14-186-309. Refunding bonds.
14-186-310. Indentures and other agreements.
14-186-311. Mortgage lien or security interest.
14-186-312. Bonds — Tax exemption.

Cross References. Form of bonds, § 19-9-101.

Local Government Bond Act of 1985, § 14-164-301 et seq.

Effective Dates. Acts 1937, No. 231, § 20: approved Mar. 10, 1937. Emergency clause provided: "Whereas, there are various communities in this state which are seriously in need of improvements of the kind authorized by this Act, the absence of which improvements results in such communities being deprived of water for transportation; and

"Whereas, the passage of this Act will create a means of immediately financing such works through emergency Government lending agencies, which are not available under existing laws; and

"Whereas, the immediate construction of such Barge Terminals, together with Tenders and Barges, Wharves, Docks, Landing Places, Piers and Basins (which can be accomplished under this Act with the aid of existing Government lending agencies) will not only relieve conditions jeopardizing water commerce, but will give employment to numerous citizens, thereby minimizing in some degree the prevailing conditions of unemployment attending the existing financial depression.

"Therefore, it appearing that the towns and cities along navigable streams are without proper facilities for the handling of freight and cargoes by water and that the same is necessary to effectuate adequate commerce, an emergency is hereby declared to exist and this Act shall be in full force from and after its passage."

Acts 1947, No. 189, § 6: approved Mar. 6, 1947. Emergency clause provided: "This act being necessary for the public health, peace and safety, an emergency is hereby declared to exist and the same shall be in full force and effect from and after its passage."

Acts 1967, No. 69, § 6: approved Feb. 9, 1967. Emergency clause provided: "This Act being necessary for the public health, peace and safety, an emergency is hereby declared to exist and the same shall be in full force and effect from and after its passage."

Acts 1970 (Ex. Sess.), No. 54, § 5: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety shall be in effect from and after its passage and approval."

Acts 1973, No. 87, § 10: Feb. 9, 1973. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that port and harbor development is essential to the continued economic development of this State; that port and harbor development is inhibited by the lack of adequate authority for assisting the development of industrial and commercial facilities and for earnings and applying to the payment of revenue bonds lease rentals derived from leases of port, harbor or other facilities; that these problems can be alleviated only by the immediate effect of this Act. Therefore, an emergency is declared to exist and, this Act being necessary for the preservation of the public peace, health and safety shall be in effect from its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

RESEARCH REFERENCES

Ark. L. Rev. Municipal Improvement Bonds in Arkansas, 8 Ark. L. Rev. 146.

Comment, Municipal Bonds and Amendment 62: Clearing Up a Serbonian Bog, 39 Ark. L. Rev. 499.

CASE NOTES

Constitutionality.

This subchapter was held not unconstitutional, since it does not create indebtedness to be paid from assessments or taxation on the real property. Robinson v. Town of De Valls Bluff, 197 Ark. 391, 122 S.W.2d 552 (1938).

This subchapter was held not void as limiting the operations to the corporate limits of the town. Robinson v. Town of De Valls Bluff, 197 Ark. 391, 122 S.W.2d 552 (1938).

14-186-301. Legislative intent.

(a) This subchapter, without reference to any other statute, shall be deemed full authority for the construction, acquisition, improvement, equipment, maintenance, operation, and repair of barge terminals together with tenders and barges, wharves, docks, landing places, piers, and basins provided for in this subchapter and for the issuance and sale of the bonds authorized by this subchapter. It shall be construed as an additional and alternative method for them and for the financing of them.

(b) No petition or election or other or further proceeding in respect to the construction or acquisition of barge terminals, together with tenders and barges, wharves, docks, landing places, piers, and basins, or to the issuance or sale of bonds under this subchapter and no publication of any resolution, ordinance, notice, or proceeding relating to such construction or acquisition or to the issuance or sale of such bonds shall be required except such as are prescribed by this subchapter, any provisions of other statutes of the state to the contrary notwithstanding.

History. Acts 1937, No. 231, § 13; Pope's Dig., § 9717; A.S.A. 1947, § 19-2719.

14-186-302. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Municipality" means a city of the first class, a city of the second class, or an incorporated town;

(2) "Governing body" means the council, board of directors, or city commission of any municipality;

(3) "Equip" means to install or place on, or in, any building or structure equipment of any and every kind, whether or not affixed, including, without limiting the generality of the foregoing, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture, furnishings, and personal property of every kind;

(4) "Sell" means to sell for such price, in such manner and upon such terms as the municipality shall determine, including, without limiting the generality of the foregoing, private or public sale and, if public, pursuant to such advertisement as the municipality shall determine, sale for cash or credit payable in lump sum or in installments over such period as the municipality shall determine and, if on credit, with or without interest, and at such rate or rates as the municipality shall determine;

(5) "Lease" means to lease for such rentals, for such periods, and upon such terms and conditions as the municipality shall determine, including, without limiting the generality of the foregoing, the granting of renewal or extension options for the rentals, for such periods, and upon such terms and conditions, as the municipality shall determine

and the granting of purchase options for such prices and upon such terms and conditions as the municipality shall determine;

(6) "Construct" means to acquire or build, in whole or in part, in such manner and by such method, including contracting therefor, and if the latter, by negotiation or bids upon such terms and pursuant to such advertising, as the municipality shall determine to be in the public interest and necessary under the circumstances existing at the time to accomplish the purposes of and authorities set forth in this subchapter;

(7) "Port authority facilities" means any real property, personal property, or mixed property of any and every kind that can be used or that will be useful to accomplish the purposes of and authorities set forth in this subchapter, including, without limiting the generality of the foregoing, wharves, docks, piers, quays, barges, shipyards, elevators, compresses, storage plants, rights-of-way, roads, streets, railroads, pipes, pipelines, reservoirs, utilities, materials, equipment, fixtures, machinery, furnishings, furniture, instrumentalities, and other real, personal, or mixed property of every kind.

History. Acts 1937, No. 231, § 2; Pope's Dig., § 9708; Acts 1947, No. 189, § 2; 1973, No. 87, § 6; 1981, No. 425, § 36; A.S.A. 1947, § 19-2703.

14-186-303. Powers of municipality generally.

Any municipality owning a port, harbor, or related facilities is authorized and empowered to acquire, construct, equip, operate, sell, lease, contract concerning, and otherwise deal in and with lands, buildings, structures, and other improvements and facilities, of whatever nature and wherever located, connected with, or incidental to or related to the operation or management of the port, harbor, or related facilities, or such facilities that may be necessary or useful in the securing and developing of industry, which may be collectively referred to in this subchapter as "port authority facilities."

History. Acts 1937, No. 231, § 1; Pope's Dig., § 9707; Acts 1947, No. 189, § 1; 1973, No. 87, § 1, A.S.A. 1947, § 19-2702.

CASE NOTES

Cited: Dowling v. Erickson, 278 Ark. 142, 644 S.W.2d 264 (1983).

14-186-304. Power of eminent domain.

To acquire property, wherever located, in furtherance of the purposes of this subchapter, any municipality shall have the power of eminent domain as is provided in §§ 18-15-301 — 18-15-303 and any statutes supplemental thereto.

History. Acts 1937, No. 231, § 9; 1973, No. 87, § 4; A.S.A. 1947, § 19-2710.

CASE NOTES

Exceptions.

In the delegation of power of eminent domain under this section for the purpose of acquiring private land for specified purposes, industrial sites or parks are not even remotely suggested, and the doctrine of ejusdem generis would require their exclusion. City of Little Rock v. Raines, 241 Ark. 1071, 411 S.W.2d 486 (1967).

14-186-305. Funding of facilities.

(a) Municipalities are authorized to use any available revenues for the accomplishment of the purposes and the implementation of the powers authorized by this subchapter, including the proceeds of revenue bonds issued from time to time pursuant to the provisions of this subchapter, either alone or together with other available funds and revenues.

(b) The amount of each issue of bonds issued may be sufficient to pay:

(1) The costs of accomplishing the purposes for which it is being issued;

(2) The cost of issuing the bonds;

(3) The amount necessary for a reserve if it is determined to be desirable in favorably marketing the bonds;

(4) The amount, if any, necessary to provide for debt service on the bonds until revenues for the payment of them are available; and

(5) Any other costs and expenditures of whatever nature incidental to the accomplishment of the specified purposes.

History. Acts 1937, No. 231, § 3; Pope's Dig., § 9709; Acts 1947, No. 189, § 3; 1967, No. 69, § 1; 1970 (Ex. Sess.), No. 54, § 1; 1973, No. 87, § 2; A.S.A. 1947, § 19-2704.

CASE NOTES

Cited: Corning v. Watson, 252 Ark. 1277, 482 S.W.2d 797 (1972).

14-186-306. Issuance of revenue bonds generally.

(a)(1) The issuance of revenue bonds shall be by ordinance of the municipality.

(2) As the ordinance authorizing their issuance may provide, the bonds of each issue may:

(A) Be coupon bonds payable to bearer or may be made registrable as to principal only or as to both principal and interest;

(B) Be in such form and denominations;

(C) Be made payable at such places within or without the state;

(D) Be issued in one (1) or more series;

(E) Bear such date or dates;

(F) Mature at such time or times, not exceeding forty (40) years from their respective dates;

(G) Bear interest at such rate or rates;

(H) Be payable in such medium of payment;

(I) Be subject to such terms of redemption; and

(J) Contain such terms, covenants, and conditions, including without limitation those pertaining to:

(i) The custody and application of the proceeds of the bonds;

(ii) The collection and disposition of revenues;

(iii) The maintenance and investment of various funds and reserves;

(iv) The imposition and maintenance of rates and charges for the use of port authority facilities;

(v) The nature and extent of the security;

(vi) The rights, duties, and obligations of the municipality and the trustee for the holders and registered owners of the bonds; and

(vii) The rights of the holders and registered owners of the bonds.

(b) There may be successive bond issues for the purpose of financing the same project. There may also be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping projects already in existence, whether or not originally financed by bonds issued under this subchapter, with each successive issue to be authorized as provided by this subchapter.

(c) Priority between and among issues and successive issues as to security, the pledge of revenues and lien on and security interest in the land, buildings, and facilities involved, may be controlled by the ordinances authorizing the issuance of bonds under this subchapter.

(d) Subject to the provisions of this section pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas.

History. Acts 1937, No. 231, § 3; Pope's Dig., § 9709; Acts 1947, No. 189, § 3; 1967, No. 69, § 1; 1970 (Ex. Sess.), No. 54, § 1, 1973, No. 87, § 2; 1981, No. 425, § 36; A.S.A. 1947, § 19-2704.

CASE NOTES

Constitutionality.

This subchapter was held not void because of the word "time" as used in this section, against contention that "time" being used in the singular meant all the bonds to be issued would have to be made due and payable at the same time. Robinson v. Town of De Valls Bluff, 197 Ark. 391, 122 S.W.2d 552 (1938).

Cited: Corning v. Watson, 252 Ark. 1277, 482 S.W.2d 797 (1972).

14-186-307. Sale and execution of bonds.

(a) Revenue bonds may be sold for such price including sale at a discount and in such manner as the municipality may determine by ordinance.

(b)(1)(A) The bonds shall be executed by the manual or facsimile signature of the mayor and the manual signature of the clerk or recorder of the municipality.

(B) The coupons attached to the bonds may be executed by the facsimile signature of the mayor of the municipality.

(2) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of the bonds or coupons, their signatures shall, nevertheless, be valid and sufficient for all purposes.

History. Acts 1937, No. 231, § 3; Pope's Dig., § 9709; Acts 1947, No. 189, § 3; 1967, No. 69, § 1, 1970 (Ex. Sess.), No. 54, § 1, 1973, No. 87, § 2; 1981, No. 425, § 36; A.S.A. 1947, § 19-2704.

CASE NOTES

Cited: Corning v. Watson, 252 Ark. 1277, 482 S.W.2d 797 (1972).

14-186-308. Payment of bonds.

(a)(1) Revenue bonds issued under this subchapter shall not be general obligations of the municipality but shall be special obligations. In no event shall the revenue bonds constitute an indebtedness of the municipality within the meaning of any constitutional or statutory limitation.

(2) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter and that it does not constitute an indebtedness of the municipality within any constitutional or statutory limitation.

(b) The principal of, and interest on, the bonds shall be secured by a pledge of, and be payable from, all, or any part, of the revenues derived from the use of port authority facilities including without limitation:

(1) Revenues derived from rates and charges imposed and maintained for the use of port authority facilities; and

(2) Lease rentals under leases or payments under security agreements or other instruments entered into under this subchapter.

History. Acts 1937, No. 231, § 3; Pope's Dig., § 9709; Acts 1947, No. 189, § 3; 1967, No. 69, § 1, 1970 (Ex. Sess.), No. 54, § 1; 1973, No. 87, § 2; A.S.A. 1947, § 19-2704.

CASE NOTES

Cited: Corning v. Watson, 252 Ark. 1277, 482 S.W.2d 797 (1972).

14-186-309. Refunding bonds.

(a)(1) Revenue bonds may be issued under this subchapter for the purpose of refunding any obligations issued under this subchapter.

(2) Refunding bonds may be combined with bonds issued under this subchapter into a single issue.

(b)(1) When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations.

(2) If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement of them.

(c)(1) All refunding bonds issued under this subchapter shall, in all respects, be authorized, issued, and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of these bonds.

(2) The ordinance under which the refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded by them.

History. Acts 1937, No. 231, § 3; Pope's Dig., § 9709; Acts 1947, No. 189, § 3; 1967, No. 69, § 1; 1970 (Ex. Sess.), No. 54, § 1; 1973, No. 87, § 2; A.S.A. 1947, § 19-2704.

CASE NOTES

Cited: Corning v. Watson, 252 Ark. 1277, 482 S.W.2d 797 (1972).

14-186-310. Indentures and other agreements.

(a)(1) The ordinance authorizing revenue bonds may provide for the execution by the municipality of an indenture which defines the rights of the holders and registered owners of the bonds and provides for the appointment of a trustee for the holders and registered owners of the bonds.

(2) The indenture may control the priority between successive issues and may contain any other terms, covenants, and conditions that are deemed desirable, including without limitation, those pertaining to:

(A) The custody and application of the proceeds of the bonds;

(B) The collection and disposition of revenues;

(C) The maintenance of various funds and reserves;

(D) The imposition and maintenance of rates and charges for the use of port authority facilities;

(E) The nature and extent of the security; and

(F) The rights, duties, and obligations of the municipality and the trustee and the rights of the holders and registered owners of the bonds.

(b) It shall not be necessary for the municipality to publish any indenture, lease, or other security agreement or instrument if:

(1) The ordinance authorizing the indenture, lease, or other security agreement or instrument is published as required by law governing the publication of ordinances of a municipality and the ordinance advises that a copy of the indenture, lease, or other security agreement or instrument, as the case may be, is on file in the office of the clerk or recorder of the municipality for inspection by any interested person; and

(2) The copy of the indenture, lease, or other security agreement or instrument, as the case may be, is actually filed with the clerk or recorder of the municipality.

History. Acts 1937, No. 231, § 3; Pope's Dig., § 9709; Acts 1947, No. 189, § 3; 1967, No. 69, § 1; 1970 (Ex. Sess.), No. 54, § 1; 1973, No. 87, § 2; A.S.A. 1947, § 19-2704.

CASE NOTES

Cited: Corning v. Watson, 252 Ark. 1277, 482 S.W.2d 797 (1972).

14-186-311. Mortgage lien or security interest.

(a)(1)(A) The ordinance or indenture securing revenue bonds may impose a foreclosable mortgage lien, security interest, or both, on the port authority facilities, or any portion thereof.

(B) The extent of the mortgage lien on or security interest may be controlled by the ordinance or indenture, including, without limitation, provisions pertaining to:

(i) The release of all, or part, of the facilities subject to the mortgage lien or security interest; and

(ii) The priority of the mortgage lien or security interest in the event of successive issues of bonds.

(2) Subject to the terms, conditions, and restrictions contained in the ordinance or indenture, any holder of any of the bonds or of any coupon attached to them, or a trustee on behalf of the holders, may, either at law or in equity, enforce the mortgage lien or security interest and, by proper suit, may compel the performance of the duties of the officials of the municipality set forth in this subchapter and set forth in the ordinance or indenture.

(b)(1)(A) In the event of a default in the payment of the principal of or interest on any bonds issued under this subchapter, any court having jurisdiction may appoint a receiver to take charge of any port authority facilities upon or in which there is a mortgage lien or security interest securing the bonds in default.

(B)(i) The receiver shall have the power to operate and maintain the facilities in receivership and to charge and collect rates and rents sufficient to provide for the payment of any costs of receivership and operating expenses of the facilities in receivership and to apply the revenues derived from the facilities in receivership in conformity with this subchapter and the ordinance or indenture securing the bonds in default.

(ii) When the default has been cured, the receivership shall be ended and the facilities returned to the municipality.

(2) The relief provided for in this subsection shall be construed to be in addition as supplemental to the remedies that may be provided for in the ordinance or indenture securing the bonds and shall be so granted and administered as to accord full recognition to priority rights of

bondholders as to the pledge of revenues from and mortgage lien on and security interest in port authority facilities as specified in, and fixed by, the ordinance or indenture securing successive issues of bonds.

History. Acts 1937, No. 231, § 7; Pope's Dig., § 9713; Acts 1973, No. 87, § 3; A.S.A. 1947, § 19-2708.

14-186-312. Bonds — Tax exemption.

(a) Bonds issued under the provisions of this subchapter shall be exempt from all state, county, and municipal taxes.

(b) This exemption includes income, estate, and inheritance taxes.

History. Acts 1937, No. 231, § 17; Pope's Dig., § 9721; Acts 1973, No. 87, § 5; A.S.A. 1947, § 19-2716.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Ark. Const. Amend. 57, § 1 and § 26-3-302. Arkansas Const. Amend. 57, § 1 provides that the General Assembly may classify intangible personal property for assessment at lower percentages of value than other property and may exempt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempts all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

Subchapter 4 — Joint Operation of Ports by Municipalities and Counties

SECTION.
14-186-401. Legislative intent.
14-186-402. Definitions.
14-186-403. Construction.
14-186-404. Powers generally.
14-186-405. Provisions in authorizing ordinance or order.
14-186-406. Lease of port.
14-186-407. Right of eminent domain.
14-186-408. Obligations incurred by municipalities or counties.
14-186-409. Issuance of revenue bonds generally.
14-186-410. Notice and hearing on issuance.
14-186-411. Execution and sale of bonds.
14-186-412. Payment of bonds.
14-186-413. Statutory mortgage lien.
14-186-414. Service rates and surplus.
14-186-415. Depository for funds.
14-186-416. Allocation of bond proceeds.
14-186-417. Bonds — Tax exemption.

Cross References. Form of bonds, § 19-9-101.

Effective Dates. Acts 1967, No. 69, § 6: approved Feb. 9, 1967. Emergency clause provided: "This Act being necessary for the public health, peace and safety, an emergency is hereby declared to exist and the same shall be in full force and effect from and after its passage."

Acts 1970 (Ex. Sess.), No. 54, § 5: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can

be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety shall be in effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety, shall be in effect from and after its passage and approval."

14-186-401. Legislative intent.

(a) Without reference to any other statute, this subchapter shall be deemed full authority for the construction, acquisition, improvement, equipment, maintenance, operation, and repair of any port provided for in this subchapter and for the issuance and sale of the bonds as authorized by this subchapter, and shall be construed as an additional or alternative method for them and for the financing of them.

(b) No petition or election or other or further proceedings in respect to the construction or acquisition of the port nor to the issuance or sale of bonds under this subchapter, no publication of any resolution, ordinance, order, notice, or proceeding relating to such construction or acquisition nor to the issuance or sale of such bonds shall be required except such as are prescribed by this subchapter, any provision of other statutes of this state to the contrary notwithstanding.

History. Acts 1959, No. 310, § 13; A.S.A. 1947, § 19-2744.

14-186-402. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Municipality" means any city of the first or second class, or any incorporated town in the State of Arkansas;

(2) "Mayor" means the mayor of municipalities having the mayor-aldermanic form of government and the presiding officer of municipalities having a commission or other form of government;

(3) "Legislative body" means the council of municipalities having the mayor-aldermanic form of government and the commission, or other governing body, of municipalities having a commission or other form of government;

(4) "Port" means ports, harbors, and river-rail barge terminals, together with wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses, landing places and basins, and other structures, and any and all facilities needful for the convenient use of them, including:

(A) The dredging of approaches to them and the construction of belt line roads and highways and bridges and causeways on them;

(B) Other bridges and causeways necessary or useful in connection with them; and

(C) Shipyards, shipping facilities, and transportation facilities incident to them and useful or convenient for the use of them, including terminal railroads, in their entirety, or any integral part of them.

History. Acts 1959, No. 310, § 1; A.S.A. 1947, § 19-2732.

14-186-403. Construction.

This subchapter, being necessary for the public health, safety, and welfare, shall be liberally construed to effectuate the purposes of it.

History. Acts 1959, No. 310, § 17; A.S.A. 1947, § 19-2748.

14-186-404. Powers generally.

Any two (2) or more municipalities, any two (2) or more counties, or any one (1) municipality or more together with any one (1) county or more in the State of Arkansas, or in an adjoining state where a navigable river forms the boundary between the states and the county or municipality in the other state lies approximately opposite the county or municipality within the State of Arkansas may join to construct, purchase, establish, equip, and operate a port within or without the corporate limits of any such municipality and within or without the boundaries of any such county, as they are defined and laid out, or as they may in the future be enlarged, as provided in this subchapter.

History. Acts 1959, No. 310, § 2; A.S.A. 1947, § 19-2733.

14-186-405. Provisions in authorizing ordinance or order.

(a) The ordinances or orders authorizing the issuance of the revenue bonds may contain provisions for the acceleration of the maturities of the unmatured bonds in the event of default in the payment of any principal or interest maturing under the bond issue, or part failure to meet any sinking fund requirements, or in any other stipulated event, and these provisions will be binding.

(b) The priorities as between successive issues of revenue bonds may also be controlled by the provisions of the ordinances or orders.

(c) The ordinances or orders may also, if deemed desirable, provide for:

(1) The issuance, contemporaneously with the execution of the bonds, of an indenture defining the rights of the bondholders inter sese;

(2) Appointing a trustee for the bondholders, which trustee may be a domestic or foreign corporation;

(3) Vesting in the trustee, to such extent as is deemed advisable, all rights of action under the bonds, providing for the priority of lien as between successive bond issues;

(4) The acceleration of bond maturities;

(5) Any covenants on the part of the municipalities or counties relating to:

(A) The construction or acquisition of the port;

(B) The application or safeguard of the proceeds of the bonds; or

(C) Other covenants intended for the protection of the bondholders; and

(6) Any other provisions, whether similar or dissimilar to the foregoing, which are consistent with the terms of this subchapter and which may be deemed desirable.

History. Acts 1959, No. 310, § 11, A.S.A. 1947, § 19-2742.

14-186-406. Lease of port.

The municipalities or counties desiring to avail themselves of the benefit of this subchapter and to join in the issuance of bonds as provided in this subchapter shall have the power to lease the port to an operating person, company, or corporation in such manner and upon such terms as may be deemed to be in the best interest of the municipalities or counties.

History. Acts 1959, No. 310, § 12; A.S.A. 1947, § 19-2743.

14-186-407. Right of eminent domain.

For the purpose of acquiring a new port under the provisions of this subchapter or for the purpose of acquiring any property necessary for it, municipalities and counties shall have the right of eminent domain as is provided in §§ 18-15-301 — 18-15-303 and any acts amendatory and supplementary to it.

History. Acts 1959, No. 310, § 14; A.S.A. 1947, § 19-2745.

14-186-408. Obligations incurred by municipalities or counties.

(a) No obligation shall, nor may, be incurred by municipalities or counties in the construction or acquisition of any port contemplated in this subchapter, or in the condemnation of property in connection with it, except such as shall be payable solely from the funds to be acquired from the sale of revenue bonds of the character authorized by this subchapter.

(b) In view of this section, the court, in condemnation proceedings instituted under this subchapter by municipalities or counties, may make such requirements of security as will serve to protect the landowner.

History. Acts 1959, No. 310, § 15; A.S.A. 1947, § 19-2746.

14-186-409. Issuance of revenue bonds generally.

(a)(1) Whenever it shall be determined by the legislative body of any municipality or by the county court of any county to join with another municipality or other municipalities or another county or other counties, to construct, purchase, establish, equip, and operate a port under the provisions of this subchapter, it shall cause an estimate to be made of the costs of it and shall provide, by ordinance of the legislative body or by order of the county court, as the situation may require, for the issuance of revenue bonds, as provided in this subchapter.

(2)(A) The ordinance or order shall set forth a brief description of the contemplated improvement or improvements, the estimated costs of them, the amount, rate of interest, time and place of payment, and other details in connection with the issuance of the bonds.

(B) The bonds shall bear interest at such rate or rates, payable semiannually, and shall be payable at such times not exceeding forty (40) years from their date and at such places as shall be prescribed in the respective ordinance or order.

(b) The bonds shall be executed by each municipality joining in the undertaking by its mayor and clerk or recorder, and by each county joining in the undertaking by its county judge and county clerk.

(c)(1) Each ordinance and order shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired or constructed, fix the minimum rate or rates on all freight or cargo that passes over or through the port, to be collected prior to the payment of all of the bonds, and shall pledge the revenue derived from the port for the purpose of paying the bonds, and the interest on them.

(2)(A) The pledge shall definitely fix and determine the amount of revenues which shall be necessary to set apart and apply to the payment of principal of, and interest on, the bonds, and the proportion of the balance of the revenues and income which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper operation of the port.

(B) The rates to be charged for the services from the port shall be sufficient to provide for:

(i) The payment of interest upon all bonds and to create a sinking fund to pay the principal of them as and when they become due;

(ii) For the operation and maintenance of the port; and

(iii) An adequate depreciation fund.

History. Acts 1959, No. 310, § 3; 1967, No. 69, § 3; 1970 (Ex. Sess.), No. 54, § 2; 1981, No. 425, § 38; A.S.A. 1947, § 19-2734.

14-186-410. Notice and hearing on issuance.

(a) After the passage of any ordinance pursuant to § 14-186-409, it shall be published one (1) time in a newspaper published in the municipality. If there is no newspaper so published, then the ordinance shall be published in a newspaper which has a bona fide general circulation within the municipality, with a notice to all persons concerned stating that:

(1) The ordinance has been passed;

(2) The municipality contemplated the issuance of the bonds described in the ordinance; and

(3) Any person interested may appear before the legislative body, upon a certain date, which shall be not less than ten (10) days subsequent to the publication of the ordinance and notice, and present protests.

(b) After the granting of any order, it shall be published one (1) time in a newspaper published in the county, with a notice to all persons concerned stating that:

(1) The order has been granted;

(2) The county contemplated the issuance of the bonds described in the order; and

(3) Any person interested may appear before the county court, upon a certain date, which shall be not less than ten (10) days subsequent to the publication of the order and notice, and present protests.

(c) At the hearing, all objections and suggestions shall be heard and the legislative body or county court shall take such action as it shall deem proper in the premises.

History. Acts 1959, No. 310, § 4; A.S.A. 1947, § 19-2735.

14-186-411. Execution and sale of bonds.

(a) Bonds provided for in this subchapter shall be issued in such amounts as may be necessary to provide sufficient funds to pay all costs of construction or acquisition, including engineering, legal, and other expenses, together with interest to a date not exceeding five (5) years.

(b)(1) Bonds issued under the provisions of this subchapter are declared to be negotiable instruments. They shall be executed as provided in this subchapter and be sealed with the seal of each municipality or county joining in the undertaking.

(2) In the event that any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of the bonds, their signatures shall, nevertheless, be valid and sufficient for all purposes the same as if they had remained in office until the delivery.

(c)(1)(A) Bonds authorized under the provisions of this subchapter may be sold at not less than ninety cents (90¢)on the dollar and the proceeds from them shall be used exclusively for the purposes for which the bonds are issued.

(B) The bonds may be sold at one (1) time or in parcels as funds are needed and may be sold at private sale or public sale on such notice and in such manner as may be determined in the respective ordinances or order.

(2)(A) A fiscal agent may be employed in the issuance and sale of the bonds, and he shall be entitled to such reasonable compensation as may be agreed upon.

(B) No fiscal agent may purchase, directly or indirectly, any of the bonds while he serves in the capacity of fiscal agent.

History. Acts 1959, No. 310, § 5; 1967, No. 69, § 4; A.S.A. 1947, § 19-2736.

14-186-412. Payment of bonds.

(a) Bonds issued under the provisions of this subchapter shall be payable solely from the revenues derived from the port for the construction or acquisition of which the bonds were issued, and the bonds shall not in any event constitute an indebtedness of any such municipality or any such county within the meaning of the constitutional provisions or limitations.

(b) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter and that it does not constitute an indebtedness of the municipality or county within any constitutional or statutory limitation.

History. Acts 1959, No. 310, § 6; A.S.A. 1947, § 19-2737

14-186-413. Statutory mortgage lien.

(a)(1) There shall be a statutory mortgage lien upon the port constructed or acquired from the proceeds of bonds authorized to be issued under the provisions of this subchapter. This lien shall exist in favor of the holders of the bonds and each of them and to and in favor of the holders of the coupons attached to the bonds.

(2) The port shall remain subject to this statutory mortgage lien until the payment in full of the principal of, and interest on, the bonds.

(b)(1) Subject to such restrictions as may be contained in the indenture authorized in this subchapter, any holder of bonds issued under the provisions of this subchapter, or of any coupons representing interest accrued on them, may, either at law or in equity, enforce the statutory mortgage lien conferred by this section, and may, by proper suit, compel the performance of the duties of the officials of the respective municipality or county set forth in this subchapter.

(2) If there is default in the payment of the principal or interest upon any of the bonds, any court having jurisdiction, in any proper action, may appoint a receiver to administer the port. This receiver shall have power to charge and collect rates sufficient to provide for the payment of the bonds and the interest on them and for the payment of the operating expenses, and power to apply the income and revenues in conformity with this subchapter and the respective ordinance or order providing for the issuance of the bonds.

History. Acts 1959, No. 310, § 7; A.S.A. 1947, § 19-2738.

14-186-414. Service rates and surplus.

(a) Rates fixed precedent to the issuance of bonds shall not be reduced until all of the bonds shall have been fully paid and, whenever necessary, may be increased in amounts sufficient to provide for the payment of the bonds, both principal and interest, and to provide proper funds for the depreciation account and operation and maintenance charges.

(b)(1) If any surplus shall be accumulated in the operating and maintenance fund which shall be in excess of the costs of maintaining and operating the port during the remainder of the fiscal year then current, and the costs of maintaining and operating the port during the fiscal year ensuing, then any excess may be transferred to either the depreciation account, or to the bond and interest redemption account as may be provided.

(2) If any surplus shall be accumulated in the depreciation account over and above that which may be found necessary for the proper replacements which may be needed during the present fiscal year and the ensuing fiscal year, then the excess may be transferred to the bond and interest redemption account.

(3) If any surplus shall exist in the bond and interest redemption account, it shall be applied, insofar as possible, in the purchase or retirement of outstanding revenue bonds payable from the account, and for that purpose the bonds not yet due may be purchased in the open market at not more than the fair market value of them.

History. Acts 1959, No. 310, § 8; A.S.A. 1947, § 19-2739.

14-186-415. Depository for funds.

(a)(1) The municipalities or counties joined together to issue revenue bonds under the provisions of this subchapter shall designate a bank, which shall be a member of the Federal Deposit Insurance Corporation, to serve as a common depository to receive and hold on deposit and for disbursement of all revenues derived from the port.

(2)(A) The depository shall install and maintain a proper system of accounts, showing the amount of revenues received and the application of them.

(B)(i) The accounts shall be subject to audit at least once a year by a competent auditor.

(ii) The report of the auditor shall be open to inspection at all times to any municipality or county joining in the issuance of the bonds, any taxpayer in these localities, or any holder of bonds issued under the provisions of this subchapter, or anyone acting for and on behalf of the municipality, county, taxpayer, or bondholder.

(b)(1) All the funds received as income from the port constructed or acquired, in whole or in part, under the provisions of this subchapter and all funds received from the sale of revenue bonds issued to construct or acquire the port shall be kept separate and apart from the other funds of the municipalities or counties.

(2) The depository shall maintain separate accounts in which shall be placed the interest and sinking fund moneys and other accounts in which shall be placed depreciation funds.

History. Acts 1959, No. 310, § 9; A.S.A. 1947, § 19-2740.

14-186-416. Allocation of bond proceeds.

(a)(1) Any specified portion of the proceeds of an issue of bonds authorized under the provisions of this subchapter may be allocated to any particular project authorized under this subchapter, or to any construction, as distinguished from the purchase of a port constructed, or vice versa.

(2)(A) After an allocation, the designated portion of the proceeds of the bond issue shall be kept separate and apart from the remaining proceeds and shall be held in trust for the performance of the purposes specified and none other.

(B) The diversion of these funds to any other purpose may be enjoined on the suit of the trustee under the indenture, if any, accompanying the bonds, or on the suit of any of the bondholders, or on the suit of any person whose property is to be served by the port.

(b) In making an allocation, the engineer's original estimate of costs shall control.

(c)(1)(A) In the event of the allocation of proceeds, the bonds themselves may be similarly or correspondingly segregated and allocated to the respective purposes of the issue.

(B) Bonds segregated and allocated to one (1) purpose shall, from the standpoint of legality and in all other respects, be deemed to have been issued to finance such purpose and that alone.

(2)(A) Notwithstanding such allocation and segregation, all bonds of the entire issue will, unless the initial ordinance or order or indenture accompanying the bonds shall provide to the contrary, be secured ratably and equally by the aggregate revenues of the port financed by the bond issue.

(B) Unless the ordinance, order, or indenture shall so specifically provide, the allocation of bond proceeds or segregation of bonds mentioned in this section will never have the effect of allocating the revenues from any particular portion of the authorized port exclusively to any particular bond or bonds.

History. Acts 1959, No. 310, § 10; A.S.A. 1947, § 19-2741.

14-186-417. Bonds — Tax exemption.

Bonds issued under the provisions of this subchapter shall be exempt from all state, county, and municipal taxes, including income and inheritance taxes.

History. Acts 1959, No. 310, § 16; A.S.A. 1947, § 19-2747.

CHAPTER 187

MUNICIPAL WHARF IMPROVEMENT DISTRICTS

SECTION.
14-187-101. Duty to operate, etc., improvements.
14-187-102. Construction of new improvements.
14-187-103. Power over property.
14-187-104. No assessment or tax.
14-187-105. Contracts ratified.
14-187-106. Procedure for sale of improvements.
14-187-107 Payment and securing indebtedness.
14-187-108. Deed of conveyance.
14-187-109. Payment exceeding debts.

Publisher's Notes. As to applicability of certain laws to municipal improvement districts existing prior to July 1, 1952, see §§ 14-90-102 and 14-90-103.

Cross References. Notice on formation of improvement districts, § 14-86-301 et seq.

Tort liability immunity, § 21-9-301 et seq.

Effective Dates. Acts 1927, No. 61, § 7. approved Mar. 1, 1927. Emergency clause provided: "Agriculture and industry of the State will be aided and assisted by the purposes herein contained, and therefore an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health, and safety, it shall take effect and be in force from and after its passage."

Acts 1933, No. 100, § 6: approved Mar. 16, 1933. Emergency clause provided: "It is hereby ascertained and declared that by reason of the inability of many of the owners of real property within improvement districts owning and operating wharves, river and rail terminals, to pay the taxes and assessments that have been levied thereon, and for the further reason that in many instances it may become necessary to make a sale of said properties, an emergency hereby exists, and this act shall take effect and be in force from and after its passage."

RESEARCH REFERENCES

C.J.S. 63 C.J.S., Mun. Corp., § 1055.
64 C.J.S., Mun. Corp., § 1812 et seq.

CASE NOTES

Constitutionality.

This subchapter is valid. Lambert v. Wharf Imp. Dist., No. 1, 174 Ark. 478, 295 S.W. 730 (1927).

14-187-101. Duty to operate, etc., improvements.

(a) Boards of improvement in municipal improvement districts organized in this state for the purpose of constructing wharves for the transfer and interchange of river and rail freights are charged with the duty to operate, manage, and control the improvements.

(b)(1) The boards shall also have the power to lease the improvements, in whole or in part, or otherwise contract for the operation of the improvement, upon such terms as may be deemed by them advisable and have power to lease from others such equipment as in the judgment of the board may be deemed advisable.

(2) The board shall collect moneys due the district for tolls, wharfage, storage, elevation, rentals, and all moneys other than moneys received from collection of the assessment of benefits and shall keep an accurate and separate account of them.

(c) The board shall have control of the disbursement of the moneys and may pay costs of operations, maintenance, repairs, replacements, renewals, improvements, depreciation, or bonded or other indebtedness in such manner as the board may deem to be in the best interests of the owners of real property in the district.

History. Acts 1927, No. 61, § 1; Pope's Dig., § 7445; A.S.A. 1947, § 20-601.

14-187-102. Construction of new improvements.

(a) In addition to the power vested by law in boards of improvement, boards described in § 14-187-101 shall have power to construct and to borrow money with which to construct new and additional improvements necessary, convenient, or required for transfer or interchange of any and all commodities.

(b) The board may issue the notes, bonds, or other evidences of indebtedness of the district to evidence this indebtedness. These obligations shall be negotiable although payable only from a certain fund, and may pledge net revenues arising from the operation of the new and additional improvements, assign any leases or contracts of or concerning the new and additional improvements, and mortgage the new and additional improvements to secure the repayment of the borrowed money and interest on it.

History. Acts 1927, No. 61, § 2; Pope's Dig., § 7446; A.S.A. 1947, § 20-602.

14-187-103. Power over property.

Boards of improvement of the class described in § 14-187-101 shall have power to:

(1) Acquire, by lease or purchase, real estate needed or convenient in the public service rendered by the improvement district;

(2) Grant rights-of-way over any and all properties owned by the district; and

(3) Grant landing rights to persons engaged in water transportation.

History. Acts 1927, No. 61, § 3; Pope's Dig., § 7447; A.S.A. 1947, § 20-603.

14-187-104. No assessment or tax.

No indebtedness, obligation, or liability, or the interest thereon, created or incurred under the provisions of this chapter shall at any time be secured or paid by or from any special assessment upon or taxation against the real property of any improvement district.

History. Acts 1927, No. 61, § 4; Pope's Dig., § 7448; A.S.A. 1947, § 20-604.

14-187-105. Contracts ratified.

All contracts made by any board of improvement of the class described in § 14-187-101, not in conflict with the terms of this chapter, are confirmed, approved, and ratified.

History. Acts 1927, No. 61, § 5; Pope's Dig., § 7449; A.S.A. 1947, § 20-605.

14-187-106. Procedure for sale of improvements.

(a) The board of improvement of any municipal wharf improvement district of this state owning wharves, river and rail terminals, warehouses, and tracks for the transfer and interchange of river and rail freights, including the lands, equipments, and all appliances incident to its operation, together with the right and franchise to operate them, may sell the properties and terminal facilities when the board shall determine, by resolution adopted by a majority vote of the board, that it would be to the best interest of the district that the sale be consummated.

(b) Before any such sale shall be consummated, there shall be filed, within one (1) year after the adoption of the resolution, with the city council of the city within which the district is situated, a petition signed by a majority in value, as shown by the last county assessment, of the owners of real property within the district, proposing to make the sale, asking that the sale be made, and stating the minimum price at which the sale shall be made. This shall in no event be a sum less than the amount necessary to pay all of the outstanding indebtedness against the district.

(c) Upon the filing of the petition or petitions, the council shall give notice by publication one (1) time a week for two (2) weeks in some newspaper published in the county in which the district is situated. This publication shall advise the owners of real property within the district that on a day therein named the council of the city will hear the petition and determine whether those signing it constitute a majority in value of the owners of real property.

(d) At the meeting named in the notice, the owners of real property within the district shall be heard before the council, which shall determine whether the signers of the petition constitute a majority in value, and the finding of the council shall be conclusive.

(e) It shall be the duty of the council to ratify and confirm the proposed sale unless within thirty (30) days thereafter suit is brought to review its action in the chancery court of the county in which the district is situated.

(f) In determining whether those signing the petition constitute a majority in value of the owners of real property within the district, the council and the court shall be guided by the records of deeds in the office of the recorder of the county and shall not consider any unrecorded instrument.

History. Acts 1933, No. 100, § 1, Pope's Dig., § 7440; A.S.A. 1947, § 20-606.

14-187-107. Payment and securing indebtedness.

(a) Where the sale price is for an amount greater than the outstanding indebtedness of a municipal wharf improvement district, the excess shall be paid in cash.

(b)(1)(A) In the event the purchaser desires to purchase the property and pay off the bonded indebtedness of the district as the bonded indebtedness matures, as a part of the purchase price, then the purchaser shall be required to assume the payment of the indebtedness, together with the accrued interest on it. To secure the payment of the indebtedness, together with the accrued interest on the bonded indebtedness, the purchaser shall be required to give a bond in favor of the city and the district in an amount equal to the unpaid purchase price including the indebtedness of the district.

(B) The bond shall also be for the maintenance of the terminal and terminal facilities and shall remain in full force and effect until the unpaid purchase price, including the indebtedness of the district, has been paid in full. However, the city council and the board of improvement of the district shall have the right to reduce the amount of the bond from time to time in proportion to the amount of the indebtedness as discharged and retired by the purchaser of the improvements.

(2) The bond shall be further conditioned that the purchaser will maintain insurance upon the properties so purchased and sold for an amount to be agreed upon by the board and respective purchaser, with

the loss payable clause for the benefit of the district making the sale, as its interests may appear.

(3) The bond provided for in this section shall be approved by the council and the board of the district and shall be made and executed by a corporate surety company authorized to do business in the State of Arkansas. However, the council and the board of the district shall, by their joint action, waive the execution of the bond required in this section when, in their judgment and discretion, the bond is not necessary or required for the protection of the city, the district, and the landowners.

History. Acts 1933, No. 100, § 2; Pope's Dig., § 7441; A.S.A. 1947, § 20-607

14-187-108. Deed of conveyance.

(a)(1)(A) The transfer of property under this chapter shall be evidenced by a deed of conveyance in the usual form and with the usual covenants of warranty. A lien against the property sold shall be retained in the deed for all of the unpaid purchase price. The lien shall include the indebtedness of the district required to be assumed by the purchaser, with the right in the board of improvement of the district upon default in the payment of any part or portion of the principal or interest, as it matures, to declare all of the purchase price due and payable and to proceed to foreclose the lien on the property.

(B) In the same action or by separate action, the board of improvement and the city shall proceed against the surety on the bond provided for in § 14-187-107 to recover any and all damages that the district may have sustained on account or by reason of the breach of the sale.

(2) The deed of conveyance shall be executed on behalf of the city by the mayor and clerk and on behalf of the improvement district by the chairman and secretary of the board of improvement.

(b)(1) The sale of all property of an improvement district shall not work a forfeiture of the corporate entity of the district until all of the purchase price including the indebtedness of the district so assumed by the purchaser shall have been paid in full.

(2) Upon the payment of all the indebtedness by the purchaser, the lien retained in the deed of conveyance shall be satisfied by a deed of release or by marginal entry upon the deed records where it is recorded, by the mayor and clerk for and in behalf of the city and by the chairman and secretary of the board of improvement for and on behalf of the district.

History. Acts 1933, No. 100, § 3; Pope's Dig., § 7442; A.S.A. 1947, § 20-608.

14-187-109. Payment exceeding debts.

If the properties authorized to be sold under this chapter should sell for more than the secured and unsecured indebtedness of the municipal wharf improvement district, then the excess shall be apportioned and paid by the board of improvement back to the then-owners of record of the real property of the district in the same proportion that each parcel of the property has contributed in taxes for the acquisition, construction, and operation of the improvement.

History. Acts 1933, No. 100, § 4; Pope's Dig., § 7443; A.S.A. 1947, § 20-609.

CASE NOTES

Deficiency on Sale.

District selling its property for less than amount of its bonded indebtedness has power to collect delinquent tax assessments against property within the district that were due and unpaid prior to the date of the sale. Papa v. Kitchens, 204 Ark. 616, 164 S.W.2d 439 (1942).

CHAPTER 188

RURAL DEVELOPMENT AUTHORITIES

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14-188-105. Appointment of commissioners, etc.
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14-188-121. Federal aid and assistance.
14-188-122. Agreements with federal government.

Publisher's Notes. Acts 1963, No. 172, § 24, provided: "Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of any other law, the provisions of this act shall be controlling."

Effective Dates. Acts 1963, No. 172, § 26: Mar. 6, 1963. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that certain rural areas in Arkansas suffer from chronic unemployment and underemployment, and a general lack of economic development and that there is urgent need for the institution of economic development for these areas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981.

Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

14-188-101. Title.

This chapter may be referred to as the "Rural Development Authority Act."

History. Acts 1963, No. 172, § 1; A.S.A. 1947, § 20-1401.

Cross References. Rural Water Associations, § 19-11-604.

14-188-102. Legislative declarations.

It is declared that:

(1) Many rural areas of Arkansas suffer from chronic unemployment and underemployment, lack of economic development, and patterns of land use which contribute to soil erosion, undue depletion of soil fertility resulting in inadequate income to support the farm family, and inadequate control of surface waters for flood prevention or drainage and for the maximum conservation and multiple utilization of water resources;

(2) Economic development of rural areas of Arkansas is a public use and purpose for which public money may be spent and private property acquired and is a governmental function of state concern;

(3) It is a proper public purpose for any state public body to aid, as provided in this chapter, any rural development authority operating within its boundaries or jurisdiction, or any rural development project located in it, as the state public body derives immediate benefits and advantages from such an authority or project;

(4) It is in the public interest that such rural development projects be commenced as soon as possible in order to alleviate these conditions of chronic unemployment, underemployment, and economic underdevelopment of rural areas which constitute an emergency; and

(5) The necessity in the public interest for the provisions enacted in this chapter is declared as a matter of legislative determination.

History. Acts 1963, No. 172, § 2; A.S.A. 1947, § 20-1402.

14-188-103. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Rural development authority", "development authority", or "authority" means any of the public corporations created pursuant to the provisions of this chapter;

(2) "County" means any county in this state;

(3) "State public body" means any city, town, county, municipal corporation, commission, district, authority, or other political subdivision of this state;

(4) "Governing body" means the county court of any county and, in the case of other state public bodies, the council, commission, board, city council, or other body having charge of the management of the affairs of the state public body;

(5) "Area of operation" means all areas within the county, except those areas lying within the corporate limits of cities and towns which have a population of more than five thousand five hundred (5,500) or such part of the area as may be designated as an area of operation pursuant to the provisions of this chapter;

(6) "Federal government" means the United States of America, or any agency or instrumentality, corporate or otherwise, of the United States of America;

(7) "Rural development project", "development project", or "project" means, but is not limited to, any work or undertaking:

(A) To develop recreational facilities;

(B) To acquire the types of land enumerated for any of the following purposes:

(i) Submarginal or low-yielding land to convert it to conservation, grazing, forestry, fish and wildlife propagation, or recreation or desirable long-range economic uses;

(ii) Land suitable for cultivation that, because of diverse ownership or location, may be made available by the owners of it and consolidated with other similar tracts in the establishment of adequate farming units or consolidated with land devoted to uses other than crop production;

(iii) Land suitable for cultivation which becomes available in large blocks upon the death or retirement of the operator or which, because of technological changes or economic conditions, may be made available by the owners of it for diverse ownership and operations as adequate farming units;

(iv) Land necessary or desirable for soil and water conservation, flood prevention, watershed protection, drainage, water storage and use, anti-pollution or sanitation uses and other public services or facilities, or necessary rights-of-way and access roads; or

(C) For installation, construction, and improvements to utility facilities, roads, parks, conservation practices and measures, flood control and drainage structures and facilities, dams, wells, and reservoirs, pipelines, waterworks, and other devices for the develop-

ment, storage, and utilization of water for agricultural, domestic, industrial, and community purposes, the development or improvement of sanitation measures, including sewage and sewage disposal facilities and anti-pollution measures, and the construction, operation, maintenance, and repair of any housing project, or part of it;

(8) "Bonds" means any bonds, notes, interim certificates, debentures, or other evidences of indebtedness issued by a rural development authority pursuant to this chapter.

History. Acts 1963, No. 172, § 3; 1967, No. 75, §§ 1, 2; A.S.A. 1947, § 20-1403.

CASE NOTES

Eminent Domain.

A corporation formed under provisions of this chapter and organized for the purpose of supplying water to municipalities has the power of eminent domain. Columbia County Rural Dev. Auth. v. Hudgens, 283 Ark. 415, 678 S.W.2d 324 (1984).

The legislative intent in enacting the 1967 amendment, which deleted the power of eminent domain when it was based solely upon the type of corporation which sought to exercise the power, while leaving intact § 18-15-601, which authorizes the power of eminent domain to any corporation organized for the specific purpose of supplying water to municipalities, was to stop the delegation of the power of eminent domain based upon the type of entity formed and base it instead upon the purpose served. Columbia County Rural Dev. Auth. v. Hudgens, 283 Ark. 415, 678 S.W.2d 324 (1984).

14-188-104. Creation of authorities.

(a)(1) In each county of the state there is created a public body corporate and politic to be known as the rural development authority.

(2) The authority shall not transact any business or exercise its powers under this chapter until or unless the county court, by proper resolution, shall declare, at any time, its need for a development authority to function in the county.

(b)(1)(A) The determination as to whether there is a need for an authority to function may be made by:

(i) The county court on its own motion; or

(ii) The county court upon the filing of a petition signed by twenty-five (25) residents of the county asserting that there is need for an authority to function in the county and requesting that the court so declare.

(B)(i) In either event, the court shall hold a public hearing on the matter as set forth in this section.

(ii) Prior to any hearing held to determine if there is need for an authority to function in the county, the clerk shall cause notice of the hearing to be published for at least two (2) successive weeks in a newspaper of general circulation in the county, setting forth the time and place of the hearing.

(iii) Not more than two (2) weeks after the last publication of the notice, the court shall hold a public hearing on it and adopt a resolution which shall state if there is a need for a development

authority in the county and define the area of operation, which may be enlarged or reduced by a majority of the commissioners, appointed pursuant to this chapter, at any subsequent meeting.

(iv) The court may adopt a resolution declaring that there is a need for development authority in the county if it shall find that:

(*a*) Chronic unemployment or chronic underemployment exists in the area; or

(*b*) The economic development of the area is inadequate when compared with the economic development of other parts of rural America.

(2) The determination as to whether there is need for a development authority to function shall be made upon the petition of a majority in number of the owners of title to real property and the owners of a majority in value of the real property in any proposed development area, as shown by the last assessment, which petition shall define the boundaries of the proposed area of development and request the creation of a rural development authority for the area.

(c) In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any resolution, regulation, or contract of the authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers under this chapter upon proof of its compliance with this section.

History. Acts 1963, No. 172, §§ 4, 5; A.S.A. 1947, §§ 20-1404, 20-1405.

14-188-105. Appointment of commissioners, etc.

(a)(1) When the county court adopts a resolution as prescribed in § 14-188-104, the court shall appoint five (5) persons as commissioners of the rural development authority created for the county.

(2)(A) The commissioners who are first appointed shall be designated to serve for terms of one (1), two (2), three (3), four (4), and five (5) years, respectively, from the date of their appointment. Thereafter, commissioners shall be appointed as indicated for a term of office of five (5) years, except that all vacancies shall be filled for the unexpired terms.

(B)(i) A certificate of the appointment or reappointment of any commissioner shall be filed with the county clerk.

(ii) The certificate shall be conclusive evidence of the due and proper appointment of the commissioner.

(3) The county court of the county shall designate one (1) of the commissioners who shall be the first chairman.

(b)(1) Immediately after appointment, the authority shall hold its first meeting, presided over by the first chairman, and elect a vice chairman from among its commissioners.

(2)(A) The authority shall employ a secretary who shall be executive director, technical experts, and such other officers, agents, and

employees as it may require and shall determine their qualifications, duties, and compensation.

(B) For such legal services as it may require, an authority may call upon the chief law officer of the county, or it may employ its own counsel.

(3) An authority may delegate to one (1) or more of its agents or employees such powers or duties as it may deem proper.

(c)(1) The powers of each authority shall be vested in its commissioners in office from time to time.

(2)(A) Three (3) commissioners shall constitute a quorum of the authority for the purposes of conducting its business and exercising its powers and for all other purposes.

(B) Action may be taken by the authority upon a vote of a majority of the commissioners present, except as provided in this chapter and except as otherwise provided in the rules and regulations of the authority.

(3) Minutes of all authority meetings are to be kept by the secretary and shall be made available to the county court of the county at any time.

(4) A commissioner shall receive no compensation for his services, but he shall be entitled to necessary expenses including travel expenses incurred in the discharge of his duties.

History. Acts 1963, No. 172, §§ 6-8; A.S.A. 1947, §§ 20-1406 — 20-1408.

14-188-106. Rules and regulations.

(a) At the first meeting, a rural development authority shall adopt rules and regulations which are to be filed with the county clerk.

(b) Amendments to the rules and regulations may be made at any time and shall be filed with the clerk.

History. Acts 1963, No. 172, § 8; A.S.A. 1947, § 20-1408.

14-188-107. Interest of commissioners or employees prohibited.

(a)(1) No commissioner or employee of a rural development authority shall directly or indirectly acquire any interest in any development project or in any property included, or planned to be included, in any project.

(2) Nor shall a commissioner or employee have any direct or indirect interest in any contract or proposed contract for materials or services to be furnished for use in connection with any project.

(b)(1) If any commissioner or employee of an authority owns or controls a direct or indirect interest in property included, or planned to be included, in any project, he immediately shall disclose it in writing to the authority. This disclosure shall be entered upon the minutes of the authority.

(2) Failure to disclose his interest shall constitute misconduct in office.

History. Acts 1963, No. 172, § 9; A.S.A. 1947, § 20-1409.

14-188-108. Removal of commissioner.

(a)(1) For insufficiency or neglect of duty or misconduct in office, a commissioner of a rural development authority may be removed by the county court.

(2) A commissioner shall be removed only after he shall have been given a copy of the charges at least ten (10) days prior to the hearing on them and had an opportunity to be heard in person or by counsel.

(b) In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings on them, shall be filed in the office of the clerk.

History. Acts 1963, No. 172, § 10; A.S.A. 1947, § 20-1410.

14-188-109. Powers of authority generally.

A rural development authority shall constitute a public body corporate and politic, exercising public and essential government functions and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, but not limited to, the following powers in addition to others granted in this chapter:

(1)(A) To sue and be sued;

(B) To have a seal and alter it at pleasure;

(C) To have perpetual succession;

(D) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and

(E) To amend and repeal rules and regulations, from time to time, not inconsistent with this chapter to carry into effect the powers and purposes of the authority;

(2)(A) To borrow money and otherwise contract indebtedness;

(B) To issue its bonds or other evidence of indebtedness; and

(C) To secure the payment of it by mortgage or pledge of any or all of its property, assets, rights, privileges, licenses, rights-of-way, easements, revenues, or income;

(3) Within its area of operation:

(A) To prepare, acquire, lease, and operate development projects; and

(B) To engage in all related activities which have as their objective the long-range economic development of the county;

(4)(A) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a development project; and

(B) Notwithstanding anything to the contrary contained in this chapter or in any other provision of law, to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with any conditions which the federal government may have attached to its financial aid of the project;

(5)(A) To own, hold, and improve real or personal property;

(B) To purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise, any real or personal property, or any interest in it;

(C) To sell, lease, exchange, transfer, assign, pledge, or dispose of any real or personal property or any interest in it;

(D) To insure or provide for the insurance of any real or personal property, or operations of the authority, against any risk or hazards;

(E) To procure insurance or guarantees from the federal government of the payment of any debts, or parts of them, secured by mortgages on any property included in any of its projects;

(6)(A) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control;

(B) To purchase its bonds at a price not more than their principal amount, with accrued interest;

(7) Within its area of operation, to investigate into unemployment, underemployment, and economic underdevelopment, and into the means of improving these conditions; and

(8) To exercise all, or any part or combination of, the powers granted in this section.

History. Acts 1963, No. 172, § 11; 1967, No. 75, § 3; A.S.A. 1947, § 20-1411.

CASE NOTES

Eminent Domain.

A corporation formed under provisions of this chapter and organized for the purpose of supplying water to municipalities has the power of eminent domain. Columbia County Rural Dev. Auth. v. Hudgens, 283 Ark. 415, 678 S.W.2d 324 (1984).

The legislative intent in enacting the 1967 amendment, No. 75, which deleted the power of eminent domain when it was based solely upon the type of corporation which sought to exercise the power, while leaving intact § 18-15-601, which authorizes the power of eminent domain to any corporation organized for the specific purpose of supplying water to municipalities, was to stop the delegation of the power of eminent domain based upon the type of entity formed and base it instead upon the purpose served. Columbia County Rural Dev. Auth. v. Hudgens, 283 Ark. 415, 678 S.W.2d 324 (1984).

14-188-110. Issuance of bonds and other evidence of indebtedness.

(a)(1)(A) A rural development authority shall have power to issue bonds or other evidence of indebtedness from time to time, in its discretion, for any of its corporate purposes.

(B) Any authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it.

(2)(A) An authority may issue these types of bonds as it may deem necessary, including bonds on which the principal and interest are payable:

(i) Exclusively from the income and revenues of the development project financed with the proceeds of the bonds, or with these proceeds together with a grant from the federal government in aid of the project;

(ii) Exclusively from the income and revenues of certain designated development projects, whether or not they were financed, in whole or in part, with the proceeds of the bonds; or

(iii) From its revenues generally.

(B) Any of the bonds may be additionally secured by a pledge of any revenues or a mortgage of any development project or other property of the authority.

(b)(1) Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance of them.

(2)(A) The bonds and other evidence of indebtedness of an authority shall not be a debt of the city, county, the state, or any political subdivision thereof, and neither the city, the county, nor the state, nor any political subdivision thereof, shall be liable on them nor in any event shall such bonds or evidence of the indebtedness be payable out of any funds or properties other than those of the authority.

(B) The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

History. Acts 1963, No. 172, § 13; A.S.A. 1947, § 20-1413.

14-188-111. Powers in connection with issuance of bonds, etc.

In connection with the issuance of bonds or with the incurrence of other indebtedness, and in order to secure the payment of bonds or other evidence of indebtedness, a rural development authority, in addition to its other powers, shall have power:

(1) To pledge all or any part of its gross or net rents, fees, or revenues to which its right then exists or may thereafter come into existence;

(2) To mortgage all, or any part, of its real or personal property, then owned or thereafter acquired;

(3)(A) To covenant against pledging all, or any part, of its rents, fees, and revenues or against mortgaging all, or any part, of its real or

personal property, to which its right or title then exists or may thereafter come into existence or to covenant against permitting or suffering any lien on such revenues or property;

(B) To covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any development project, or any part of it; and

(C) To covenant as to what other, or additional, debts or obligations may be incurred by it;

(4)(A) To covenant as to the bonds to be issued as to the issuance of the bonds, in escrow or otherwise, and as to the use and disposition of the proceeds of them;

(B) To provide for the replacement of lost, destroyed, or mutilated bonds;

(C) To covenant against extending the time for the payment of its bonds, or interest on them;

(D) To redeem the bonds;

(E) To covenant for their redemption; and

(F) To provide the terms and conditions of them;

(5)(A) To covenant as to the rents and fees to be charged in the operation of a development project or projects, the amount to be raised each year or other period of time by rents, fees, and other revenues, and as to the use and disposition to be made of them;

(B) To create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes; and

(C) To covenant as to the use and disposition of the moneys held in these funds;

(6) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which the consent may be given;

(7)(A) To covenant as to the use of any or all of its real or personal property; and

(B) To covenant as to the maintenance of its real and personal property, the replacement of it, the insurance to be carried on it, and to the use and disposition of insurance moneys;

(8)(A) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation; and

(B) To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which this declaration and its consequences may be waived;

(9)(A) To vest in trustees, or the holders of bonds or any proportion of them, the right to enforce the payment of the bonds or any covenants securing or relating to the bonds;

(B) To vest in trustees the right, in the event of a default by the authority, to take possession and use, operate, and manage any

development project, or part of it, and to collect the rents and revenues arising from it, and to dispose of the moneys in accordance with the agreement of the authority with the trustee;

(C) To provide for the powers and duties of trustees and to limit the liabilities of them; and

(D) To provide the terms and conditions upon which the trustees, or the holders of bonds or any proportion of them, may enforce any covenant or rights securing or relating to the bonds; and

(10)(A) To exercise all, or any part or combination, of the powers granted in this section;

(B) To make covenants other than, and in addition to, the covenants expressly authorized in this section, of like or different character; and

(C) To make such covenants and to do any and all such acts and things as may be necessary, convenient, or desirable in order to secure its bonds, or, in the absolute discretion of the authority, as will tend to make the bonds more marketable, notwithstanding that the covenants, acts, or things may not be enumerated in this section.

History. Acts 1963, No. 172, § 15;
A.S.A. 1947, § 20-1415.

14-188-112. Form and sale of bonds, etc.

(a)(1) Bonds or other evidence of indebtedness of a rural development authority shall be authorized by a resolution upon a vote of at least three (3) commissioners.

(2) As the resolution, its trust indenture, or mortgage may provide, the bonds:

(A) May be issued in one (1) or more series; and

(B) Shall:

(i) Bear such date or dates;

(ii) Mature at such time or times;

(iii) Bear interest at such rate or rates;

(iv) Be in such denomination or denominations;

(v) Be in such form, either coupon or registered;

(vi) Carry such conversion or registration privileges;

(vii) Have such rank or priority;

(viii) Be executed in such manner;

(ix) Be payable in such medium of payment, at such place or places; and

(x) Be subject to such terms of redemption, with or without premium.

(3)(A) The bonds may be sold under such terms or conditions as the authority may require.

(B) Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

(b) In case any of the commissioners or officers of the authority whose signatures appear on any bonds shall cease to be commissioners

or officers before the delivery of the bonds, their signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the commissioners or officers had remained in office until the delivery.

(c) In any suit, action, or proceedings involving the validity or enforceability of any bond of an authority, or the security for it, any such bond reciting in substance that it has been issued by the authority to aid in financing a rural development project shall be conclusively deemed to have been issued for a development project of such character and the project shall be conclusively deemed to have been planned, located, and constructed in accordance with the purposes and provisions of this chapter.

History. Acts 1963, No. 172, § 14; 1981, No. 425, § 23; A.S.A. 1947, § 20-1414.

14-188-113. Validation of indebtedness.

All outstanding loans and their evidences of indebtedness obtained and processed under the provisions of this chapter are validated, ratified, and confirmed. These evidences of debt are, respectively, found and declared to be valid and subsisting obligations of the makers in accordance with the terms of them.

History. Acts 1967, No. 75, § 4; A.S.A. 1947, § 20-1424.

14-188-114. Remedies of obligees.

An obligee of a rural development authority shall have the right, in addition to all other rights which may be conferred upon the obligee, subject only to any contractual restrictions binding upon the obligee, by:

(1) Mandamus, suit, action, or proceeding, at law or in equity, to compel the authority, and the commissioners, officers, agents, or employees of it, to perform each and every term, provision, and covenant contained in any contract of the authority with or for the benefit of the obligee, and to require the carrying out of any or all such covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this chapter; or

(2) Suit, action, or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of the obligee of the authority.

History. Acts 1963, No. 172, § 16; A.S.A. 1947, § 20-1416.

14-188-115. Additional remedies conferrable on obligees.

A rural development authority shall have power, by its resolution, trust indenture, mortgage, lease, or other contract, to confer upon any obligee holding or representing a specified amount in bonds or other evidence of indebtedness the right, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in the resolution or instrument, by suit, action, or proceeding in any court of competent jurisdiction, to:

(1) Cause possession of any development project, or any part of it, to be surrendered to any obligee;

(2) Obtain the appointment of a receiver of any development project of the authority, or any part of it, and of the rents and profits from it. If a receiver is appointed, he may enter and take possession of the project, or any part of it, and operate and maintain it, collect and receive all fees, rents, revenues, or other charges thereafter arising from it, and shall keep the moneys in a separate account and apply them in accordance with the obligations of the authority, as the court shall direct; and

(3) Require the authority and the commissioners of it to account as if it and they were the trustees of an express trust.

History. Acts 1963, No. 172, § 17;
A.S.A. 1947, § 20-1417

14-188-116. Exemption from lien and execution sale.

(a) All real property of a rural development authority shall be exempt from levy and sale by virtue of an execution. No execution or other judicial process shall issue against it, nor shall any judgment against an authority be a charge or lien upon its real property.

(b) The provisions of this section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of any authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees, or revenues.

History. Acts 1963, No. 172, § 18;
A.S.A. 1947, § 20-1418.

14-188-117. Exemption from taxes or assessments.

(a)(1) The property of a rural development authority is declared to be public property used for essential and exclusively public and governmental purposes and not for profit.

(2) The property and income from notes and bonds issued by an authority shall be exempt from all taxes, including state income taxes, and special assessments of the state or any state public body.

(b)(1) In lieu of taxes or special assessments, an authority may agree to make payments to a state public body for improvements, services,

and facilities furnished by the state public body for the benefit of a development project.

(2) In no event shall these payments exceed the estimated cost to the state public body of the improvements, services, or facilities to be furnished.

History. Acts 1963, No. 172, § 22;
A.S.A. 1947, § 20-1422.

14-188-118. Security for deposits.

(a) A rural development authority may, by resolution, provide that all moneys deposited by it shall be secured by:

(1) Obligations of the United States or of the state of a market value equal at all times to the amount of the deposits; or

(2) Any securities in which savings banks may legally invest funds within their control; or

(3) An undertaking with such sureties as shall be approved by the authority faithfully to keep and pay over upon the order of the authority any such deposits and agreed interest on them.

(b) All banks and trust companies are authorized to give any such security for such deposits.

History. Acts 1963, No. 172, § 21;
A.S.A. 1947, § 20-1421.

14-188-119. Cooperation by authorities.

Any two (2) or more rural development authorities, created by or pursuant to the provisions of this chapter, may join or cooperate with one another in the exercise, either jointly or otherwise, of any or all their powers for the purpose of financing, including the issuance of bonds, notes, or other evidence of indebtedness and giving security for them, planning, undertaking, constructing, operating, or contracting with respect to development projects located within the area of operation of any one (1) or more of the authorities.

History. Acts 1963, No. 172, § 12;
A.S.A. 1947, § 20-1412.

14-188-120. Aid and cooperation by state public bodies.

For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of rural development projects, including development projects of the federal government, located within the area in which it is authorized to act, any state public body may, upon such terms, with or without consideration, as it may determine, may:

(1) Dedicate, sell, convey, or lease any of its property to a rural development authority;

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities, or any other works, which it is

otherwise empowered to undertake, to be furnished adjacent to or in connection with development projects;

(3) Furnish, dedicate, close, pave, install, grade, regrade, plan, or replan streets, roads, roadways, alleys, sidewalks, or other places which it is otherwise empowered to undertake;

(4) Enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with a development authority or the federal government respecting action to be taken by the state public body pursuant to any of the powers granted by this chapter; and

(5) Do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, construction, or operation of such projects.

History. Acts 1963, No. 172, § 23;
A.S.A. 1947, § 20-1423.

14-188-121. Federal aid and assistance.

(a) In addition to the powers conferred upon a rural development authority by other provisions of this chapter, an authority is empowered to borrow money or accept grants or other financial assistance from the federal government for, or in aid of, any development project within its area of operation. To these ends, an authority may comply with such conditions and enter into such mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable.

(b) It is the purpose and intent of this section to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance, or operation of any development project and in any other activity or undertaking of the authority.

History. Acts 1963, No. 172, § 19;
A.S.A. 1947, § 20-1419.

14-188-122. Agreements with federal government.

(a) In any contract or amendatory or superseding contract for a loan entered into between any rural development authority and the federal government, or any of its agencies, with respect to any development project undertaken by the authority, any authority is authorized to make such covenants, including covenants with holders of obligations of the authority issued for purposes of the project involved, and to confer upon the federal government, or any of its agencies, such rights and remedies as the authority deems necessary to assure the fulfillment of the purposes for which the project was undertaken.

(b) In any such contract, notwithstanding any other provisions of law, the authority may agree to sell and convey the project, including all lands appertaining to it to which the contract relates, to the federal government, or any agency of it, upon the occurrence of such conditions

as may be prescribed in the contract, and at a price, which may include the assumption by the federal government, or any agency of it, of the payment, when due, of the principal of, and interest on, outstanding obligations of the authority issued for purposes of the project involved, determined as prescribed in it and upon such other terms and conditions as are provided in it.

(c) Any authority is authorized to enter into such supplementary contracts and to execute such conveyances as may be necessary to carry out the provisions of this section.

History. Acts 1963, No. 172, § 20; A.S.A. 1947, § 20-1420.

CHAPTERS 189-198

[Reserved]

SUBTITLE 12. PUBLIC UTILITIES GENERALLY

CHAPTER 199

GENERAL PROVISIONS

SUBCHAPTER.
1. General Provisions.
2. Profits of Electric or Water System.
3. Lease or Sale.
4. Joint Management.
5. Electric Distribution System Management.
6. Television Signal Distribution Systems.
7 Municipal utility systems.

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., § 560 et seq.

C.J.S. 62 C.J.S., Mun. Corp., § 292. 63 C.J.S., Mun. Corp., §§ 1050-1052.

Subchapter 1 — General Provisions

SECTION.
14-199-101. Surplus revenues.
14-199-102. Compensation of school district in lieu of taxes.
14-199-103. Vacation of public utility easements.
14-199-104. Insurance and retirement plans.

Cross References. Local Government Bond Act of 1985, § 14-164-301 et seq.

Effective Dates. Acts 1949, No. 72, § 4: approved Feb. 10, 1949. Emergency clause provided: "Whereas, many municipal corporations are finding it an impossi-

bility to employ competent personnel to operate water and light plants on account of there being no provision for social security, group insurance or other benefits, and

"Whereas, such operation is necessary to the public peace, health and safety of the inhabitants of the State of Arkansas, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage."

Acts 1959, No. 126, § 3: Feb. 27, 1959. Emergency clause provided: "It has been found and is declared by the General Assembly that many public school districts are severely burdened financially by the loss of taxes resulting from the tax exempt status of municipally owned utilities located in such districts; that in many instances the municipalities involved are willing and able to compensate such districts for this loss; that there is urgent need to permit the municipalities involved to make such compensation; and that enactment of this measure will to a great extent lessen the financial burden for such districts. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1967, No. 305, § 4: approved Mar. 10, 1967. Emergency clause provided: "It is hereby found and declared by the General Assembly that the authority of municipalities to pledge surplus utility revenues to and use for the payment of bonds of municipalities for the purposes set forth in this Act (which purposes may not themselves produce sufficient revenues) will greatly enhance the marketability of the municipalities' bonds and will generally result in a better price and that only by giving immediate effect to this Act can these essential public benefits be realized. The financing made possible and benefited hereby is essential to programs of immediately needed public works that will benefit the municipalities and their citizens and residents. It is, therefor, declared that an emergency exists and this Act, being immediately necessary for the preservation of the public peace, health, safety and welfare shall take effect and be in force from and after its passage."

Acts 1967, No. 318, § 2: Mar. 13, 1967. Emergency clause provided: "It is hereby found and declared by the General Assembly that there is an urgent need to permit the use of surplus electric revenues by cities and towns in this State to assist in the financing of an adequate public school system and this Act is necessary to authorize such use. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

Acts 1977, No. 740, § 7: Mar. 24, 1977 Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that this nation's energy crisis and the financial plight of larger Arkansas cities dependent on utility revenues for operations requires that procedures be available to such cities to allow the most efficient operation of utility system possible. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate protection of the public peace, health and safety shall take effect immediately on its passage and approval."

Acts 1979, No. 37, § 4: approved Feb. 2, 1979. Emergency clause provided: "It is hereby found and declared by the General Assembly that the existing authority of municipalities to pledge surplus utility revenues to and use for the payment of bonds of municipalities for the purposes set forth in Act No. 305 of 1967 (which purposes may not themselves produce sufficient revenues) are unduly restrictive and that the amendments herein contained will greatly enhance the ability of municipalities to finance needed public works and that only by giving immediate effect to this Act can these essential public benefits be realized. The financing made possible and benefited hereby is essential to programs of immediately needed public works that will benefit the municipalities and their citizens and residents. It is, therefore, declared that an emergency exists and this Act, being immediately necessary for the preservation of the public peace, health, safety and welfare shall take effect and be in force from and after its passage."

Acts 1979, No. 519, § 5: Mar. 21, 1979. Emergency clause provided: "It has been found by the General Assembly of the State of Arkansas and it is hereby declared that present Arkansas statutes per-

mitting the pledging of surplus utility revenues for the financing of needed municipal improvements are inadequate in that city halls and municipal administration buildings are not included among the specified improvements, that some municipalities have an immediate and urgent need for the construction and the financing of city halls and municipal administration buildings and that in some instances surplus utility revenues afford the only means available for such financing. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect upon its passage and approval."

Acts 1989, No. 108, § 4: Feb. 20, 1989. Emergency clause provided: "It has been found and it is hereby declared that certain municipalities in this State have a need to develop or to assist in the development of public ports and harbors, to the benefit of such municipalities and their inhabitants, and that the only effective method whereby such assistance can be provided is by the pledging of surplus utility revenues to revenue bonds issued by such municipalities. Therefore, an emergency is declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

14-199-101. Surplus revenues.

(a) As used in this section, unless the context otherwise requires:

(1) "Surplus revenues" means revenues remaining after adequate provision shall have been made for expenses of operation, maintenance, and depreciation of the utilities and all requirements pertaining to the payment of principal, interest, and fees in connection with bonds and establishing and maintaining reserves of ordinances or indentures securing bonds issued to finance the cost of constructing, reconstructing, extending, improving, or equipping the utilities, have been fully met and complied with;

(2) "Utilities" means the utility or utilities involved in the pledging and use of surplus utility revenues pursuant to this section for the payment of the principal of, interest on, and paying agent's fees in connection with any bonds issued by the municipality.

(b) Any municipality in this state is authorized to pledge and use surplus revenues derived from one (1) or more of the water, sewer, gas, or electric utilities already owned at the time of any such pledge or use by the municipality for any of the following purposes only:

(1) Off-street parking facilities;

(2) Sanitation facilities;

(3) Hospital buildings and facilities;

(4) Public park buildings, improvements, and facilities;

(5) Auditoriums;

(6) Convention centers;

(7) Streets and roadways;

(8) Airport improvements and facilities;

(9) City halls and municipal administration buildings;

(10) Public ports, harbors, and industrial or other facilities related thereto, whether owned by the municipality or another public body;

(11) Fire and emergency equipment; or

(12) Any combination of the above purposes.

(c) The authority conferred by this section pertains to the pledging and use of surplus utility revenues to bonds issued by municipalities for the purposes set forth in subsection (b) of this section only, which purposes are not related to the operation of utilities. Nothing in this section shall be construed as modifying or diminishing the authority, the existence of which is confirmed and ratified, of the direct pledging and cross pledging of all or any part of the revenues of each utility to utility revenue bonds issued for constructing, reconstructing, extending, improving, or equipping that and other utilities already owned by the municipality at the time of any such pledge, cross pledge, or use, as is presently done in the case of many municipalities in the state.

History. Acts 1967, No. 305, §§ 1, 2; 1979, No. 37, § 1; 1979, No. 519, § 1; A.S.A. 1947, §§ 19-3931, 19-3932; Acts 1989, No. 108, § 1; 1993, No. 195, § 1.

Amendments. The 1993 amendment inserted (b)(11) and redesignated former (b)(11) as (b)(12).

Cross References. Use of surplus revenues for hospitals, § 14-265-107.

14-199-102. Compensation of school district in lieu of taxes.

(a)(1) Upon approval of the governing body of a municipality, a utility owned by the municipality may compensate annually a public school district in which the utility is wholly or partly located in an amount not to exceed the amount the utility would pay in taxes if it were subject to taxation.

(2) The amount shall be based on a percentage not in excess of twenty percent (20%) of the value of all properties of the utility located in the public school district computed at the millage rate currently in effect in that district. The valuation may be determined by a certified public accountant who is personally familiar with the assets of the utility.

(3) The purpose of this subsection is to permit, but not to require, municipally owned utilities to compensate public school districts for loss of taxes resulting from the utilities' tax-exempt status.

(b)(1) The council of any city of the first class, city of the second class, or incorporated town in this state owning an electric utility system and deriving revenues from it may agree to and make payments in lieu of taxes to any school district, all or a portion of which is within the city limits of the municipality, when some or all of the property of the electric utility system of the municipality is within the boundaries of the school district.

(2) The amount of the payment in lieu of taxes to be made to the school district shall be such amount as the council of the municipality shall determine, not to exceed the amount that would be due the school district in taxes if the property of the electric utility system of the municipality located within the boundaries of the school district was privately owned and subject to taxation by the school district.

(3) Payments in lieu of taxes shall be made only from surplus electric revenues.

(4) "Surplus electric revenues," as used in this subsection, means electric revenues remaining after adequate provision shall have been made for expenses of operation, maintenance, and depreciation and all requirements of ordinances, orders, and indentures securing bonds theretofore issued or securing bonds thereafter issued to finance the cost of acquiring, constructing, reconstructing, extending, or improving the electric utility system have been fully met and complied with.

History. Acts 1959, No. 126, §§ 1, 2; 1967, No. 318, § 1; A.S.A. 1947, §§ 19-3929, 19-3930, 19-3933.

14-199-103. Vacation of public utility easements.

(a) Cities of first and second class and incorporated towns are given power and authority to vacate public utility easements or segments thereof, within such cities and towns under the conditions and in the manner provided for the vacation of streets and alleys by §§ 14-301-301 — 14-301-306.

(b) A petition requesting the vacation of a public utility easement, signed by the property owners through whose property the easement extends shall be filed with the municipal legislative body and dealt with in the manner provided for by law.

(c) Upon the adoption of an ordinance vacating a public utility easement, or a segment thereof, the ownership of the lot, block, or parcel of real property through which the easement extends shall cease to be burdened with the easement.

(d) Nothing in this section shall be construed as empowering first-class and second-class cities and incorporated towns to vacate utility easements still in use or to vacate utility easements owned by utilities without just compensation therefor.

(e) This section shall be cumulative to §§ 14-301-301 — 14-301-306.

History. Acts 1979, No. 728, §§ 1-5; A.S.A. 1947, §§ 19-3939 — 19-3943.

14-199-104. Insurance and retirement plans.

(a) In any city of the first class owning and operating municipal light and power systems, the boards of commissioners or other controlling or managing bodies in control of such systems are authorized to provide plans of social security, group insurance, hospitalization insurance, old age pension and retirement pay benefits, or any of these benefits, for any or all employees of municipal light and power systems under such plan or plans as the boards of commissioners deem most desirable.

(b) The plans for any or all benefits may include payments from both the boards of commissioners and the employees, or either of them, and may be underwritten by some solvent insurance company or by a fund set up and maintained by the boards of commissioners from the funds

of the light and power systems, except such funds as are set aside for specific purposes, the employees, or both or either of them.

(c) The plans, when perfected, shall supersede all other plans provided by law.

History. Acts 1949, No. 72, §§ 1, 2; A.S.A. 1947, §§ 19-3927, 19-3928.

Subchapter 2 — Profits of Electric or Water System

SECTION.
14-199-201. Applicability to commission form of government.
14-199-202. Authorized use.
14-199-203. Ordinance requirement.
14-199-204. Apportionment ratio.
14-199-205. Payment of allocated funds.

14-199-201. Applicability to commission form of government.

No part of this subchapter shall apply to a municipal plant operated solely by city commissioners without a majority vote of the commissioners.

History. Acts 1937, No. 267, § 5; A.S.A. 1947, § 19-3905.

14-199-202. Authorized use.

Any municipality owning an electric power plant or a water system, where the plant or system has no bonded indebtedness, is authorized to use the profit derived from the operation of the plant or system toward the payment of the outstanding bonded indebtedness of all sewer or street improvement districts within the limits of the municipality, as provided in this subchapter.

History. Acts 1937, No. 267, § 1; Pope's Dig., § 10042; A.S.A. 1947, § 19-3901.

Cross References. Use of profits in municipal improvement districts, § 14-89-901 et seq.

14-199-203. Ordinance requirement.

The profits from the operation of any electric power plant or water system within any municipality shall not be used toward the retirement of the bonded indebtedness of any sewer or street improvement district within such city until the use of the profit for that purpose has first been authorized by an ordinance regularly adopted by the council of the municipality.

History. Acts 1937, No. 267, § 2; Pope's Dig., § 10043; A.S.A. 1947, § 19-3902.

14-199-204. Apportionment ratio.

At the end of each fiscal year of the operation of the municipally owned electric plant or water system, the profit from the operation of the plant or system shall be determined. If the council or city commission of the municipality shall determine that the profit or a part thereof shall be used toward the retirement of the bonded indebtedness of all the sewer or street improvement districts within the limits of such municipality, then the council, by ordinance as provided in § 14-199-203, shall allocate the amount to the various improvement districts within the limits of the municipality according to the following ratio: The total amount of bond and interest maturities of all sewer or street improvement districts within such municipality coming due during the particular fiscal year for which the profit of the plant and system was determined, shall be determined, and the ratio which the total bond and interest maturities of any sewer or street improvement district for such fiscal year bears to the total bond and interest maturities of all the sewer or street improvement districts for the fiscal year shall be the percentage used to allocate to each sewer or street improvement district, its proportion of the profit to be used for the retirement of the bonded indebtedness of any such district.

History. Acts 1937, No. 267, § 3; Pope's Dig., § 10044; A.S.A. 1947, § 19-3903.

14-199-205. Payment of allocated funds.

The amounts allocated to the various sewer or street improvement districts within the limits of a municipality shall be paid to the districts when the commissioners of the district shall request that the amount be paid in order that the amount may be used to pay the bond and interest maturities of the districts which are about to come due.

History. Acts 1937, No. 267, § 4; Pope's Dig., § 10045; A.S.A. 1947, § 19-3904.

Subchapter 3 — Lease or Sale

SECTION.
14-199-301. Lease or contract.
14-199-302. Sale.
14-199-303. Payment — Bond.
14-199-304. Deed of conveyance — Satisfaction of lien.
14-199-305. Use of down payment.
14-199-306. First opportunity to purchase — Notice.

Effective Dates. Acts 1923, No. 322, § 6: approved Mar. 6, 1923. Emergency clause provided: "All laws or parts of laws in conflict herewith be and the same are hereby repealed, and this act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage."

Acts 1927, No. 349, § 2: approved Mar.

28, 1927. Emergency clause provided: "This act being necessary to the public welfare an emergency is hereby declared to exist and this act to take effect from and after its passage."

CASE NOTES

Conflicts of Interest.

It is against public policy for the officers of a municipal corporation to lease or sell waterworks or light plants to themselves. Rogers v. Sangster, 180 Ark. 907, 23 S.W.2d 613 (1930).

14-199-301. Lease or contract.

(a) The council of any municipal corporation operating a system of waterworks or sewer or gas or electric plants belonging to and owned by any town or city may lease, or may contract for the operation of, the system of waterworks or sewer or gas or electric plants for such period of time and upon such terms and conditions as the council may deem for the best interest of the town or city.

(b) The lessees, or parties with which the town or city has contracted, shall be required to maintain, keep in repair, and return the plant to the town or city in as good condition as when received, ordinary wear and tear excepted, but the maintenance contemplated shall permit more modern or suitable machinery or equipment, equally as efficient to perform the service required, to be installed in place of machinery or equipment then in use.

(c) No lease shall be made, and no contract for the operation of any such system shall be entered into, except with persons, firms, or corporations, both for profit and nonprofit, holding a franchise to operate a system of waterworks or sewer or gas or electric plants in the city or town in which the plant or system to be leased or operated is situated.

(d) No plant shall be taken over for operation under the provisions of this subchapter unless and until the lessee, or the party with which the town or city contracts, has filed with the town or city an approved bond, in such sum as the council may require, for the faithful fulfillment of the terms of the lease or contract.

History. Acts 1923, No. 322, § 1; Pope's Dig., § 7390; A.S.A. 1947, § 19-3906; Acts 1995, No. 764, § 1.

Amendments. The 1995 amendment inserted "or sewer" twice and "or may contract for the operation of" once in (a); inserted "or parties ... contracted" in (b); rewrote (c); in (d), inserted "or the party . contracts" and added "or contract"; and made stylistic changes.

Cross References. Self-insured fidelity bond programs, § 21-2-701 et seq.

CASE NOTES

Improvement Districts.

A city has no authority under this section to lease a waterworks and electric light plant owned by improvement districts although operated by the city. Rogers v. Sangster, 180 Ark. 907, 23 S.W.2d 613 (1930).

Cited: Ogan v. Jackson, 175 Ark. 820,

300 S.W. 446 (1927); Gantt v. Arkansas Power & Light Co., 194 Ark. 925, 109 S.W.2d 1251 (1937).

14-199-302. Sale.

(a) The council of any municipal corporation owning a system of waterworks or gas or electric plants may sell the system or either of them, together with the right to operate them when they shall determine by resolution adopted by a majority vote of the council that it would be for the best interest of the town or city that the sale be consummated.

(b)(1) Before any sale shall be consummated, a petition shall be filed with the council within one (1) year after the adoption of the resolution, signed by a majority in value as shown by the last county assessment of the owners of real property within the town or city proposing to make the sale, asking that the sale be made and stating the minimum price at which the sale shall be made, which shall in no event be a sum less than the amount necessary to pay all the outstanding secured indebtedness against the plant or system.

(2) Upon the filing of this petition, the council of the city or town shall give notice by publication once a week for two (2) weeks in a newspaper published in the county in which the city or town may lie, advising the owners of real property within the city or town that on a day therein named the council of the city or town will hear the petition and determine whether those signing it constitute a majority in value of the owners of real property.

(3) At the meeting named in the notice, the owners of real property within the city or town shall be heard before the council, which shall determine whether the signers of the petition constitute a majority in value. The finding of the council shall be conclusive unless within thirty (30) days thereafter suit is brought to review its action in the chancery court of the county in which the city or town lies.

(4) In determining whether those signing the petition constitute a majority in value of the owners of the real property within the city or town, the council and the chancery court shall be guided by the records of deeds in the office of the recorder of the county and shall not consider any unrecorded instrument.

History. Acts 1923, No. 322, § 2; Pope's Dig., § 7391, A.S.A. 1947, § 19-3907.

14-199-303. Payment — Bond.

(a) Where the sale price is an amount greater than the outstanding secured indebtedness of the district, at least the excess over the amount of the secured indebtedness shall be paid in cash.

(b)(1) All deferred payments, if any, shall be secured by a bond for one and one-half (1½) times the total amount of the deferred payments. This bond shall be for the maintenance of the plant or system during

the time of any outstanding secured indebtedness and for the prompt payment of any interest or principal on any secured indebtedness as and when the interest or principal shall fall due.

(2) The bond shall be further conditioned that the purchaser will maintain insurance upon the plant for an amount to be agreed upon, with a "loss payable" clause for the benefit of the town or city making the sale as its interest may appear.

(3) The bond shall be approved by the town or city council.

(4) The bond provided for in this section and § 14-199-301 shall be made by a corporate surety company authorized to do business in the State of Arkansas.

History. Acts 1923, No. 322, § 3; Pope's Dig., § 7392; A.S.A. 1947, § 19-3908.

Cross References. Self-insured fidelity bond programs, § 21-2-701 et seq.

14-199-304. Deed of conveyance — Satisfaction of lien.

(a) The transfer of property under this subchapter shall be evidenced by a deed of conveyance in the usual form and with the usual covenants or warranty; but a lien against the property sold shall be retained in the deed for all of the unpaid sale price with the right, upon default of payment of any interest or indebtedness when any interest or indebtedness falls due, to declare all of the unpaid sale price due and payable and to proceed to a foreclosure. The deed of conveyance shall be executed on behalf of a town or city by the mayor and the recorder or clerk.

(b) A receipt duly executed by the treasurer of a town or city shall release the purchaser from further liability for the payment of the amount recited in the receipt.

(c) Upon the payment of all indebtedness for which a lien may be retained in the deed of conveyance, the mayor and recorder or clerk of a town or city are authorized and directed to satisfy the lien by a deed or release, or by marginal entry upon the deed records where the lien may be recorded.

History. Acts 1923, No. 322, § 4; Pope's Dig., § 7393; A.S.A. 1947, § 19-3909.

14-199-305. Use of down payment.

The proceeds of any initial cash payment from the sale of any system of waterworks or gas or electric plants of any town or city shall be applied first to the payment of all unsecured debts owing by the town or city on account of the plant or system. Any remainder shall be turned over to the treasurer of the town or city.

History. Acts 1923, No. 322, § 5; 1927, No. 349, § 1; Pope's Dig., §§ 7394, 10046; A.S.A. 1947, § 19-3910.

CASE NOTES

In General.

Prior to the 1927 amendment, profits from the sale of waterworks would go to property owners of the district. Ogan v. Jackson, 175 Ark. 820, 300 S.W. 446 (1927).

14-199-306. First opportunity to purchase — Notice.

(a) Any privately owned utility whose main facilities and service area is wholly located within no more than two (2) counties and which serves primarily rural residential customers shall not be transferred or sold to another privately owned legal entity without first the county, or a political subdivision of the county established by the utility's customers solely for the purpose of acquiring the utility, being given the first opportunity to purchase the utility together with the right to meet any other bona fide offers.

(b) Prior to any offering, the utility shall attach a notice to each customer's bill that the utility will be offered for sale on a specified future date not less than ninety (90) days after the date of the first notice.

History. Acts 1987, No. 347, § 1.

Subchapter 4 — Joint Management

SECTION.
14-199-401. Joint management authorized.
14-199-402. Ordinance abolishing old boards — Light and water commission created.
14-199-403. Compensation of commissioners.
14-199-404. Report and audit of operation.

Cross References. Consolidated water and light improvement districts, § 14-218-101 et seq.

Effective Dates. Acts 1947, No. 106, § 5: Feb. 20, 1947. Emergency clause provided: "Whereas, cities of the first class, owning and operating both a Municipal Light Plant and Municipal Water Plant, being operated and controlled by separate Boards and Commissions, duplicate expenses necessarily arise, and great confusion necessarily results from the same, and the General Assembly finds it to the best interest of the people of the State of Arkansas to immediately consolidate said enterprises, boards, and commissions, an emergency is hereby declared and this act shall be in full force and effect from and after its passage and approval."

14-199-401. Joint management authorized.

All cities of the first class whose population exceeds seven thousand (7,000) according to the official federal census now owning both a light plant and a water plant which are operated by separate boards or commissions, the light plants having been constructed pursuant to Arkansas Constitution, Amendment 13 [repealed], and the water plants

having been constructed by an improvement district embracing the city as a whole, are authorized and empowered to adopt a municipal ordinance providing for the consolidation of the boards or commissions, and for the joint management of the water and light plants by the consolidated boards or commissions.

History. Acts 1947, No. 106, § 1; A.S.A. 1947, § 19-3911.

A.C.R.C. Notes. It is questionable whether Ark. Const. Amend. 13 is repealed in whole or whether only those provisions that conflict with Ark. Const. Amend. 62 are repealed by Ark. Const. Amend. 62.

14-199-402. Ordinance abolishing old boards — Light and water commission created.

(a) Cities of the first class, in order to comply with the provisions of this subchapter, are authorized and empowered to adopt and approve an ordinance providing that:

(1) Each board or commission referred to in § 14-199-401 shall be immediately abolished;

(2) A new board, known as the "light and water commission," shall be created and established to be composed of not more than nine (9) members, with at least one (1) member from each ward, whose qualifications and tenures of office are set forth in subsection (b).

(b)(1) The city council shall, immediately after the passage of the ordinance, select four (4) members; two (2) members from the light board or commission and two (2) members from the water board or commission abolished by this ordinance to serve as commissioners of the light and water commission.

(2)(A) Members appointed shall serve until the third city general election following their appointment and thereafter shall be elected for two (2) year terms by the qualified voters of the municipality.

(B) The remaining members of the commission shall be appointed to serve until the second general election after the passage of this ordinance and thereafter shall be elected each two (2) years by the qualified voters of the municipality at the city general election.

(c) The commission shall have authority to designate its chairman and prescribe rules and regulations for the operation of the commission.

History. Acts 1947, No. 106, § 2; A.S.A. 1947, § 19-3912.

14-199-403. Compensation of commissioners.

The city council of any city adopting an ordinance in conformity with this subchapter is authorized to allow a per diem expense for each member at each meeting of the light and water commission herein provided. The per diem expense shall not exceed ten dollars ($10.00), and neither shall it exceed twenty dollars ($20.00) in any calendar month.

History. Acts 1947, No. 106, § 3; A.S.A. 1947, § 19-3913.

14-199-404. Report and audit of operation.

The city council of any city adopting the ordinance provided for in this subchapter shall require the consolidated governing body designated as the light and water commission to make a complete and competent audit by an auditor approved by the city council each biennium, from and after the effective date of the ordinance. The city council shall require the light and water commission to file with the city council a complete report and audit of the operation of both the light plant and water plant. This audit shall be publicized in a legal newspaper having a general circulation in the county wherein the city is located.

History. Acts 1947, No. 106, § 4; A.S.A. 1947, § 19-3914.

Subchapter 5 — Electric Distribution System Management

SECTION.
14-199-501. Authority to create commission.
14-199-502. General powers of commission.
14-199-503. Fiscal powers of commission.
14-199-504. Quarterly report.
14-199-505. Outstanding bond indebtedness — Cross-pledging.

14-199-501. Authority to create commission.

All cities of the first class in excess of population of fifty thousand (50,000), according to the last official federal census and having the mayor-council form of government on the date of passage of this subchapter, now owning an electric distribution system are authorized and empowered to adopt a municipal ordinance providing for the creation of a commission for the management of the electric distribution system.

History. Acts 1977, No. 740, § 1; A.S.A. 1947, § 19-3934.

Publisher's Notes. Concerning "the date of passage of this subchapter," Acts 1977, No. 740 was signed by the Governor and took effect on March 24, 1977

CASE NOTES

Cited: City of N. Little Rock v. Gorman, 264 Ark. 150, 568 S.W.2d 481 (1978).

14-199-502. General powers of commission.

(a) The commission created pursuant to this subchapter shall have full power to operate and control the utilities system entrusted to its direction by the city ordinance creating the commission.

(b) Subject to such restrictions as may be prescribed in the ordinance creating the commission pertaining to the expenditure of surplus utility

revenues, establishment of rates for service, and appointment of commission members, the commission shall have plenary powers with reference to the selection, supervision, and payment of compensation for all employees required in connection with the operation of the electrical distribution system, with reference to management, improvement, extension, and maintenance of the electrical distribution system, with reference to the purchase of such materials and supplies, or machinery as are necessary and proper, and with reference to necessary indebtedness to finance the extension, betterment, or improvement of the electrical distribution system.

History. Acts 1977, No. 740, § 2;
A.S.A. 1947, § 19-3935.

14-199-503. Fiscal powers of commission.

(a)(1) Subject to restrictions set forth in the ordinance creating the commission, it shall have power to borrow money and issue negotiable evidences of debt in the form of serial bonds or short-term notes. It may execute such negotiable notes or bonds to obtain the funds needed to carry out its functions.

(2) The commission may also pledge its revenues including the income from operations, and it may mortgage its property to secure the payment of money borrowed.

(b) The rate of interest to be paid and the time of maturity of all obligations shall be such as, in the judgment of the commission, will be most advantageous to the commission and its patrons. However, no obligation shall be made to run for more than twenty (20) years and no obligation running longer than one (1) year shall bear interest at more than the maximum rate allowable for income from the obligations to qualify for tax-exempt status under the laws of the United States of America and the State of Arkansas.

History. Acts 1977, No. 740, § 3;
A.S.A. 1947, § 19-3936.

14-199-504. Quarterly report.

The commission shall report to the city council on each calendar quarter of the year on the state of the operations of the commission and its financial affairs.

History. Acts 1977, No. 740, § 4;
A.S.A. 1947, § 19-3937.

14-199-505. Outstanding bond indebtedness — Cross-pledging.

(a) If any city of the first class subject to this subchapter shall have outstanding, on the date of enactment of this subchapter, any revenue bonds issued under the authority of § 14-199-101, or the general laws of the state wherein electric utility revenues or surplus electric utility revenues are pledged, then, in that event, the ordinance authorizing the creation of the commission envisioned within this subchapter shall specifically provide all of the terms and provisions of ordinances and laws authorizing such bonded indebtedness shall be fully complied with. The ordinance creating the commission provided for in this subchapter shall make specific provisions limiting the authority of the commission so as not to cause a default under any existing bond issue. If the city council deems it appropriate, the authorizing ordinance shall provide for separate accountings and audits as is required by such bond issues.

(b) Nothing contained in this section shall either prohibit or authorize the cross-pledging of sewer, electric, and water revenues as may be now allowed by law or § 14-199-101.

History. Acts 1977, No. 740, § 5; A.S.A. 1947, § 19-3938.

Publisher's Notes. Concerning "the date of enactment of this subchapter," Acts 1977, No. 740 was signed by the Governor and took effect on March 24, 1977

Subchapter 6 — Television Signal Distribution Systems

SECTION.
14-199-601. Authority of municipalities generally — Immunity.
14-199-602. Appliances, fixtures, and equipment authorized.

14-199-601. Authority of municipalities generally — Immunity.

(a) Any city, and incorporated town may own, construct, acquire, purchase, maintain, and operate a television signal distribution system for the purpose of receiving, transmitting, and distributing television impulses and television energy, including audio signals and transient visual images, to the inhabitants of the city or town and to the inhabitants of an area not to exceed two (2) miles outside the boundaries of the city or town.

(b) In no case shall a city or town be held liable for damages for failure to furnish or provide the service.

History. Acts 1987, No. 328, § 1.

CASE NOTES

Analysis

Delegation of authority.
Immunity.
Monopolies.
State policy.

Delegation of Authority.

A franchise agreement entered into by a city and its light and water commission

did not involve unlawful delegation of legislative powers. Paragould Cablevision, Inc. v. City of Paragould, 305 Ark. 476, 809 S.W.2d 688 (1991).

Immunity.

The city and the light and water commission, which had been authorized to enter the cable television business, had state action immunity with respect to their actions in development of the business. Paragould Cablevision, Inc. v. City of Paragould, 930 F.2d 1310 (8th Cir.), cert. denied, 502 U.S. 963, 112 S. Ct. 430, 116 L. Ed. 2d 450 (1991).

Monopolies.

The clear delegation of control to cities over their television systems as expressed in this subchapter makes the finding of immunity against Sherman Act claims for the city and its cable franchise relatively straightforward. Paragould Cablevision, Inc. v. City of Paragould, 739 F. Supp. 1314 (E.D. Ark. 1990), aff'd, 930 F.2d 1310 (8th Cir.), cert. denied, 502 U.S. 963, 112 S. Ct. 430, 116 L. Ed. 2d 450 (1991).

State Policy.

A sufficient state policy to displace competition existed where the challenged anticompetitive restraint was a necessary and reasonable consequence of the city's statutorily authorized entry into the cable television business. Paragould Cablevision, Inc. v. City of Paragould, 930 F.2d 1310 (8th Cir.), cert. denied, 502 U.S. 963, 112 S. Ct. 430, 116 L. Ed. 2d 450 (1991).

14-199-602. Appliances, fixtures, and equipment authorized.

The city or town may erect, construct, operate, repair, and maintain in, upon, along, over, across, through, and under its streets, alleys, highways, and public grounds, poles, cross-arms, cables, wires, guy-wires, stubs, anchors, towers, antennas, pipes, connections, and other appliances, fixtures, and equipment necessary, expedient, or useful in connection with a television signal distribution system.

History. Acts 1987, No. 328, § 1.

CASE NOTES

Monopolies.

The clear delegation of control to cities over their television systems as expressed in this subchapter makes the finding of immunity against Sherman Act claims for the city and its cable franchise relatively straightforward. Paragould Cablevision, Inc. v. City of Paragould, 739 F. Supp. 1314 (E.D. Ark. 1990), aff'd, 930 F.2d 1310 (8th Cir.), cert. denied, 502 U.S. 963, 112 S. Ct. 430, 116 L. Ed. 2d 450 (1991).

Subchapter 7 — Municipal utility systems.

SECTION.
14-199-701. Authority to lease or contract with nonprofit corporation.
14-199-702. Subchapter supplemental.

14-199-701. Authority to lease or contract with nonprofit corporation.

(a) Any city of the first class, city of the second class, and incorporated town owning a waterworks system, sewer system, gas system, electric system, television signal distribution system, other municipal utility system, or any combination thereof, may lease such system or systems to any nonprofit corporation organized under the laws of the

State of Arkansas, or may contract with any such nonprofit corporation, for the purpose of the management and operation of such system or systems for such period of time and upon such terms and conditions as may be deemed to be in the best interests of the city or town.

(b) The nonprofit corporation shall manage and operate the utility system or systems solely on behalf of the city or town and shall be deemed an instrumentality thereof for such purpose.

(c) No such lease or contract shall contain an option to purchase or otherwise transfer ownership to such utility system or systems, nor shall any such lease or contract have a term which is more than eighty percent (80%) of the reasonably expected economic life of the utility system or systems.

(d) The directors of the nonprofit corporation shall be nominated by its members, and the members and directors shall be approved by the council, board of directors, or other like body in which the legislative functions of a municipality are vested and shall be residents of the city or town.

(e) The provisions of subsections (b) and (d) of this section shall not apply to nonprofit corporations formed under the provisions of § 23-18-301 et seq., and nothing in this subchapter shall act to prevent or prohibit a city or town from entering into a lease or contract with such a nonprofit corporation for the purposes set out in subsection (a) of this section.

History. Acts 1995, No. 764, § 2.

14-199-702. Subchapter supplemental.

It is the specific intent of this subchapter that the provisions of this subchapter are supplemental to other constitutional or statutory provisions which may provide for the leasing of or contracting for the management and operation of municipal utility systems.

History. Acts 1995, No. 764, § 2.

CHAPTER 200

MUNICIPAL AUTHORITY OVER UTILITIES

SECTION.
14-200-101. Jurisdiction over utilities — Appeal.
14-200-102. Violation of municipal franchise — Penalty — Damages.
14-200-103. Duration of permits granted by municipalities.
14-200-104. Continuation of existing franchises and permits.
14-200-105. Acceptance of permit as consent to future sale.
14-200-106. Municipal power to acquire, construct, or operate public utility plant.
14-200-107. Election to authorize purchase by municipality.
14-200-108. Compensation and damages for purchase.
14-200-109. Municipal power to finance electric facilities system.
14-200-110. Municipal access to utility records.

SECTION.
14-200-111. Rural service.
14-200-112. Exemption from regulation by state commissions.

Effective Dates. Acts 1919 (1st Ex. Sess.), No. 264, § 3: approved Mar. 13, 1919. Emergency clause provided: "This Act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage."

Acts 1921, No. 124, § 27: approved Feb. 15, 1921. Emergency declared.

Acts 1935, No. 324, § 71: approved Apr. 2, 1935. Emergency clause provided: "It is found that the statutes of this state for the regulation of public utilities are insufficient, inadequate, and do not afford to the public, or the public utilities, of the state, speedy and adequate relief from excessive or insufficient rates, and that many of the rates of public utilities operating in this state are not what they should be, thereby entailing a grave injustice on the public or the utilities; and that this act is necessary for the preservation of the public peace, health, and safety; an emergency is therefore declared and this act shall take effect and be in force from and after its passage."

Acts 1983, No. 796, § 5: Mar. 24, 1983. Emergency clause provided: "It has been found by the General Assembly that there is a lack of clarity and in some instances a lack of agreement regarding the ability of Arkansas municipalities and improvement districts to finance electric system facilities without the approval of the Arkansas Public Service Commission and that this lack of clarity places a substantial burden on the financing of such facilities and may result in costly delays. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in force upon its passage and approval."

Acts 1985, No. 357, § 5: Mar. 15, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that an adequate, reliable and economical supply of electric power and energy for those rural areas contiguous to Arkansas municipalities is essential to the continued health, welfare, economic growth and development of the people of Arkansas and that this Act is immediately necessary to assure the availability of such power and to thereby assure the protection and preservation of the health, safety and welfare of the people. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 423, § 2: Jan. 1, 1990.

Identical Acts 1994 (1st Ex. Sess.), Nos. 6 and 7, § 10: Mar. 4, 1994. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that the decision of the Arkansas Court of Appeals in AT&T Communications of the Southwest, Inc. v. City of Little Rock has created uncertainty and confusion concerning the ability of municipalities to assess franchise fees as a term or condition for the use of public rights-of-way; that the immediate implementation of this Act is necessary to eliminate this uncertainty and confusion and to reconfirm the authority of municipalities to levy franchise fees. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., § 560 et seq.

Ark. L. Rev. The Growth of Utility Regulation in Arkansas: A Functional Survey, 21 Ark. L. Rev. 539.

C.J.S. 62 C.J.S., Mun. Corp., § 292.
63 C.J.S., Mun. Corp., §§ 1050-1052.

CASE NOTES

Analysis

Construction.
Sewer rates.
Telephone service.

Construction.

Under the first four sections of this chapter, a municipality may by ordinance assess and determine a rate/fee for service rendered by any public utility occupying streets (rights-of-way) within the municipality, and such an ordinance is deemed prima facie reasonable; in common parlance, such franchise fees are, in form, rental payments for a public utility's use of the municipality's right-of-way. City of Little Rock v. AT&T Communications of S.W., Inc., 318 Ark. 616, 888 S.W.2d 290 (1994).

Sewer Rates.

Acts 1935, No. 324, § 14-235-201 et seq., and this chapter gave municipalities different cumulative procedures for acquiring a sewage system. However, only § 14-235-201 et seq. gives a city the specific authority to set sewer rates, and only § 14-235-201 et seq. provides a procedure for changing those rates. City of Ft. Smith v. O.K. Foods, Inc., 293 Ark. 379, 738 S.W.2d 96 (1987).

Telephone Service.

City ordinance that required telephone company to pay certain fees for the privilege of using the city's public streets, and also levied a $.004 per minute charge on all long distance telephone calls that were billed to a city service address, was a franchise and fee ordinance and authorized by law. City of Little Rock v. AT&T Communications of S.W., Inc., 318 Ark. 616, 888 S.W.2d 290 (1994).

14-200-101. Jurisdiction over utilities — Appeal.

(a)(1) Acting by ordinance or resolution of its council, board of directors, or commission, every city and town shall have jurisdiction to:

(A) Except as provided in § 23-4-201, determine the quality and character of each kind of, and rates for, product or service to be furnished or rendered by any public utility within the city or town and all other terms and conditions, including a reasonable franchise fee, upon which the public utility may be permitted to occupy the streets, highways, or other public places within the municipality, and the ordinance or resolution shall be deemed prima facie reasonable, provided that no franchise fee shall exceed the higher of the amount in effect as to that entity on January 1, 1997 or four and one-quarter percent (4 ¼%) unless agreed to by the affected utility or approved by the voters of the municipality.

(B) Require of any public utility such additions and extensions to its physical plant within the municipality as shall be reasonable and necessary in the interest of the public and to designate the location and nature of all such additions and extensions, the time within which they must be completed, and all conditions under which they must be constructed;

(C) Provide a penalty for noncompliance with the provisions of any ordinance or resolution adopted pursuant to the provisions of this chapter;

(D) Nothing herein shall limit the authority of the public utility to collect from its customers residing in each municipality an amount

which equals the franchise fee assessed by the municipality on the public utility; and

(E) The term "public utility", for the purposes of this section, shall mean any electric, gas, sewer, or telephone company, and any company providing similar services, except those currently excluded pursuant to § 23-1-101(4)(B)(ii); and provided further that, when franchise fees assessed for basic local exchange services are based on revenues, such revenues shall consist of revenues from basic local service, excluding, among other things, extension, terminal equipment, toll, access, yellow pages, and other miscellaneous equipment revenues.

(2) Effective January 1, 1994, regardless of the date of filing, no cause of action that challenges the right of a municipality to assess a franchise fee against a public utility for permission to occupy the streets, highways, or other public places within the municipality shall result in the award of money damages; provided, however, that consistent with the provisions of Arkansas Constitution, Article 16, § 13, any cause of action for illegal exaction found to be meritorious may result in the granting of injunctive relief.

(b)(1) Any public utility affected by any such ordinance or resolution, or any other party authorized to complain to the Arkansas Public Service Commission under § 23-3-119, may appeal from the action of the council or commission by filing within twenty (20) days of the final action a written complaint with the commission setting out wherein the ordinance or resolution is unjust, unreasonable, or unlawful, whereupon the commission shall proceed with an investigation, hearing, or determination of the matters complained of, with the same procedure that it would dispose of any other complaint made to it, and with like effect.

(2) Such appeal shall not suspend the enforcement of any provisions of the ordinance or resolution unless the commission, after a hearing, upon notice and for good cause shown, orders the suspension conditioned upon the filing of a bond with the commission as provided for the bond in § 23-4-408.

(3) Nothing in this section shall be construed to in anywise limit or restrict the jurisdiction or the powers of the commission as in other sections granted.

(c) In all matters of which by this act the commission and cities and towns are each given original jurisdiction, such jurisdiction shall be concurrent. Cities and towns shall take no action with respect to any matter under investigation by the commission until the matter has finally been disposed of by the commission. The commission shall take no action with respect to any matter which is the subject of an ordinance or resolution pending before the council or commission of any city or town until the matter has finally been disposed of.

(d) Nothing in this act shall deprive or be construed as depriving any municipality of the benefits or rights accrued or accruing to it under any franchise or contract to which it may be a party, and neither the

commission nor any court exercising jurisdiction under this act shall deprive the municipality of any such benefit or right.

History. Acts 1935, No. 324, § 15; Pope's Dig., § 2078; A.S.A. 1947, § 73-208; Acts 1993, No. 403, § 7; 1994 (1st Ex. Sess.), No. 6, §§ 3, 6; 1994 (1st Ex. Sess.), No. 7, §§ 3, 6; 1997, No. 182, § 1.

A.C.R.C. Notes. A comma following "1997" could not be inserted in subdivision (a)(1)(A) pursuant to § 1-2-303.

Publisher's Notes. Identical Acts 1994 (1st Ex. Sess.) Nos. 6 and 7, § 1, provided: "LEGISLATIVE FINDINGS. (a) In the State of Arkansas, municipalities are granted jurisdiction and authority over the use and control of the public rights-of-way within the corporate limits of the municipality, to the extent that such jurisdiction does not conflict with state or federal statutes or regulations.

"(b) This historic authority has included the right to assess franchise fees for the privilege of the use of such rights-of-way and of providing utility service to the public.

"(c) On numerous occasions, the courts of the State of Arkansas have referred to this right to assess franchise fees against public utilities. For example, in Hot Springs Electric Light Co. v. Hot Springs, 70 Ark. 300 (1902), the Arkansas Supreme Court expressly stated that cities may assess a franchise fee as a condition for the use of public rights-of-way."

Identical Acts 1994 (1st Ex. Sess.) Nos. 6 and 7, § 2, provided: "STATEMENT OF POLICY. It is, and historically has been, the policy of the State of Arkansas to permit municipalities, as one means of raising revenues, to assess municipal franchise fees against public utilities for the privilege of providing utility services to the public and of using public rights-of-way, including streets, highways, or other public places of any kind whatsoever within municipal boundaries and such franchise fees have not been considered to be within the scope of A.C.A. §26-73-103 so as to require a vote of the electorate.

"It is also the policy of the State that nothing in this Act shall amend or adversely impact the terms and provisions of an existing franchise agreement between a municipality and a public utility entered into pursuant to A.C.A. §14-54-704, A.C.A. §14-200-101, or any other enabling legislation relating to franchise fees in effect at the time of the agreement."

Amendments. The 1993 amendment, in (a)(1), added "Except as provided in § 23-4-201" at the beginning, and inserted "and rates for," after "each kind of."

The 1994 (1st Ex. Sess.) amendment by identical acts Nos. 6 and 7 redesignated former (a)(1)-(a)(3) as (a)(1)(A)-(a)(1)(C), respectively; inserted "board of directors" in the introductory language of (a); in (a)(1)(A), inserted "including a reasonable franchise fee" and added the proviso; and added (a)(1)(D), (a)(1)(E), and present (a)(2).

The 1997 amendment rewrote (a)(1)(A).

Meaning of "this act". Acts 1935, No. 324, codified as §§ 14-200-101, 14-200-103 — 14-200-108, 14-200-111, 23-1-101, 23-1-102, 23-1-104, 23-1-112, 23-2-301, 23-2-303 — 23-2-308, 23-2-310, 23-2-312, 23-2-314 — 23-2-316, 23-2-402, 23-2-405, 23-2-408, 23-2-410 — 23-2-412, 23-2-414 — 23-2-418, 23-2-421, 23-2-426, 23-2-428, 23-2-429, 23-3-112 — 23-3-115, 23-3-118, 23-3-119, 23-3-201 — 23-3-206, 23-4-102, 23-4-103, 23-4-105 — 23-4-109, 23-4-402 — 23-4-405, 23-4-620 — 23-4-634, and 23-18-101.

Cross References. Rate-making authority, § 23-4-201.

RESEARCH REFERENCES

UALR L.J. Halbert, Municipal Law—Utility Franchise Fees—True Nature of Levy Immaterial When City Possesses Statutory Authority. City of Little Rock v. AT&T Communications, Inc., 318 Ark. 616 (1994), 18 UALR L.J. 259.

CASE NOTES

ANALYSIS

In general.
Applicability.
Appeals.
Ordinance.
—Not upheld.
—Presumption of validity.
—Upheld.
Police power.
Rate-making.
Terms and conditions.

In General.

The Railroad (now Public Service) Commission had no authority to grant a certificate of convenience and necessity to a company distributing electricity in a city under franchise from it. De Queen Light & Power Co. v. Curtis, 157 Ark. 238, 248 S.W. 5 (1923) (decision under prior law).

Order of Department of Public Utilities (now Public Service Commission) setting aside rule made by city ordinance regulating character of service to be furnished by telephone companies to users of its service and restoring company's rule pertaining to such service was not judicial but legislative and within the power of the department (now commission) to make it. City of Fort Smith v. Department of Pub. Utils., 195 Ark. 513, 113 S.W.2d 100 (1938).

Applicability.

Subdivision (a)(1) of this section empowers Arkansas municipalities to assess utility franchises operating within the municipalities, and telephone companies are not excluded. City of Little Rock v. AT&T Communications of S.W., Inc., 318 Ark. 616, 888 S.W.2d 290 (1994).

Appeals.

Whether a proceeding to review an order of a city commission was treated as an appeal or an independent proceeding to declare the statute void, the hearing before the circuit court was de novo, and the same facts were considered and like principles were applicable in either case in determining the rights of a street railway company to discontinue service on a portion of its line. Fort Smith Light & Traction Co. v. Bourland, 160 Ark. 1, 254 S.W. 481 (1923), aff'd, 267 U.S. 330, 45 S. Ct. 249, 69 L. Ed. 631 (1925), aff'd, 267 U.S. 330, 45 S. Ct. 249, 69 L. Ed. 631 (1925) (decision under prior law).

A city ordinance requiring public utilities operating within the city to maintain business offices there and containing an emergency clause became final so as to permit a utility to appeal to the commission under subsection (b) immediately, and the utility was not required by subsection (c) to wait until the 30 days for filing a referendum petition under Ark. Const., Art. 7 had expired. City of DeWitt v. Public Serv. Comm'n, 248 Ark. 285, 451 S.W.2d 188 (1970).

Ordinance.

—Not Upheld.

An ordinance of the City of Little Rock that required a utility to pay a certain fee for the privilege of using the public streets was not valid: (1) because the city lacked the authority to enact the ordinance, since this section does not provide such authority and since § 23-17-101 bars such action by the city; and (2) because the levy of the ordinance is an unauthorized tax that has not been approved by the vote of the people as required by § 26-73-103. AT & T Communications v. City of Little Rock, 44 Ark. App. 30, 866 S.W.2d 414 (1993), rev'd on other grounds, 318 Ark. 616, 888 S.W.2d 290 (1994).

—Presumption of Validity.

Under subdivision (a)(1) of this section, a city ordinance using time-unit methodology in establishing a franchise fee was by law presumptively reasonable. City of Little Rock v. AT&T Communications of S.W., Inc., 318 Ark. 616, 888 S.W.2d 290 (1994).

—Upheld.

City ordinance that required telephone company to pay certain fees for the privilege of using the city's public streets, and also levied a $.004 per minute charge on all long distance telephone calls that are billed to a city service address, was a franchise and fee ordinance and authorized by law. City of Little Rock v. AT&T Communications of S.W., Inc., 318 Ark. 616, 888 S.W.2d 290 (1994).

Police Power.

This section gives a city the right to impose valid police power regulations; however, it remains for the appellate court

to determine whether the levy imposed by the city is a lawful exercise of that police power. AT & T Communications v. City of Little Rock, 44 Ark. App. 30, 866 S.W.2d 414 (1993), rev'd on other grounds, 318 Ark. 616, 888 S.W.2d 290 (1994).

Rate-Making.

Since courts of equity lack concurrent jurisdiction with the Public Service Commission in setting utility rates, rates approved by the commission may be put into effect immediately without posting a bond, and notwithstanding any provision of a municipal franchise such a utility may have been granted. General Tel. Co. v. Lowe, 263 Ark. 727, 569 S.W.2d 71 (1978).

While this section grants municipalities the right to establish terms and conditions upon which public utilities may be permitted to operate within the borders of municipalities, § 23-4-201 clearly divests the cities and towns from having any jurisdiction to fix or determine rates and grants exclusive jurisdiction to the Public Service Commission in rate-making matters. City of Ft. Smith v. Arkansas Pub. Serv. Comm'n, 278 Ark. 521, 648 S.W.2d 40 (1983).

Terms and Conditions.

Cities of second class may require water company to furnish meters at its expense. Wilson Water & Elec. Co. v. City of Arkadelphia, 95 Ark. 605, 129 S.W. 1091 (1910) (decision under prior law).

Every city or town has the authority to determine the terms and conditions under which a public utility can occupy the streets and public places within the municipality. Arkansas-Missouri Power Corp. v. City of Rector, 164 F.2d 938 (8th Cir. 1947); Southwestern Bell Tel. Co. v. City of Fayetteville, 271 Ark. 630, 609 S.W.2d 914 (1980).

14-200-102. Violation of municipal franchise — Penalty — Damages.

(a) Whenever a person, company, or corporation which has secured a franchise from any municipality in this state to furnish power, water, gas, or electricity to the municipality and to consumers thereof fails or refuses to keep, erect, or use due diligence to maintain reasonably adequate facilities or instrumentalities to enable it to carry out its contractual obligations with the municipality and the consumers therein, and negligently or willfully fails or refuses to furnish an adequate supply of the utility it has contracted and agreed to furnish and provide, then, and in every such case, the person, company, or corporation so failing or refusing shall be subject to a penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each day such negligent or willful failure or refusal continues to exist. Each day shall constitute a separate offense.

(b) This penalty shall be recovered by the city attorney of any municipality in a suit instituted by him, or by the prosecuting attorney filing information in behalf of the state, for the use and benefit of the municipality affected, in a court of competent jurisdiction, from any utility because of the negligent or willful failure or refusal of the person, company, or corporation to furnish an adequate supply of the utility as provided by its contract.

(c) Any person or consumer of the utility having a contract with any such utility for service, upon the failure or refusal of the utility, shall have the right to institute a suit in his own behalf in a court of competent jurisdiction. He shall recover compensatory damages for any failure or refusal in whatsoever amount the proof may show he has been damaged.

(d) This section shall not apply to cities or towns with a population of less than three thousand (3,000) that have granted franchises for electric current for lighting and other purposes that is furnished by a manufacturing establishment not solely engaged in the manufacture of electric current for lighting and other purposes.

History. Acts 1919, No. 264, § 1; C. & M. Dig., § 7549; Pope's Dig., § 9623; A.S.A. 1947, § 73-213.

14-200-103. Duration of permits granted by municipalities.

(a) All permits, licenses, or franchises granted by any municipality to any public utility authorizing it to occupy the streets, highways, alleys, and other public ways in the municipality, for the purpose of constructing and maintaining any facilities for the supplying of any public service or commodity, shall be unlimited as to time.

(b) The utility or its successors and assigns shall hold the permit, license, or franchise in accordance with the terms, conditions, and limitations of this act and any future regulatory acts.

(c) The permit, license, or franchise shall continue in force until such time as a municipality having authority to do so shall purchase the property operating under such permit, license, or franchise in accordance with the provisions of this act, or until terminated according to the law for misuser or nonuser.

History. Acts 1935, No. 324, § 44, Pope's Dig., § 2107; A.S.A. 1947, § 73-243.

Meaning of "this act". See note to § 14-200-101.

14-200-104. Continuation of existing franchises and permits.

Any permit, license, or franchise heretofore granted to a public utility by the state or a municipality to occupy the streets, highways, alleys, or other public ways of any municipality for the purpose of carrying on any of the public services defined in this act, is amended in such manner that the permit, license, or franchise shall continue in force until such time as the municipality having authority to do so shall purchase the property operated under the permit or franchise in accordance with the terms and provisions of this act or until terminated according to law for misuser or nonuser.

History. Acts 1935, No. 324, § 40; Pope's Dig., § 2103; A.S.A. 1947, § 73-239.

Publisher's Notes. Acts 1901, No. 212, § 1, legalized all franchises theretofore issued to any person or corporation by the municipal authorities of any city or incorporated town authorizing the construction of electric light systems so that they would have the same force and effect as if the statutes then in force authorizing granting franchises for lighting purposes mentioned electricity.

Acts 1921, No. 124, § 15, set out the procedure by which all persons, firms, companies, or corporations which had surrendered contracts, franchises, or leases and were then operating under indeterminate permits granted by the Arkansas Corporation Commission (now the Arkan-

sas Public Service Commission) could within ninety (90) days of the passage of the act, have their franchise, contract, or lease reinstated by the municipal council or city commission having jurisdiction under the same conditions that existed at the time the indeterminate permit was granted by the Arkansas Corporation Commission (now the Arkansas Public Service Commission). Failure to make application to so reinstate the franchise, contract, or lease would be deemed to be a waiver by the person, firm, etc. operating any public service utility to insist upon the fulfillment of the franchise, contract, or lease in a court of law or equity. Additionally, all persons, firms, etc. electing not to reinstate their franchise, contract, or lease under the terms of the section and all such persons, firms, etc. holding or entitled to operate under any other indeterminate permit issued theretofore by the Arkansas Corporation Commission (now the Arkansas Public Service Commission) would be permitted to operate under the terms and conditions specified in that permit, but would be subject to regulation in the same manner, to the same extent, and with like force and effect as other and similar facilities.

Meaning of "this act". See note to § 14-200-101.

Cross References. Franchise invalid when made pending annexation to municipality, § 14-40-1213.

CASE NOTES

Failure to Reinstate Franchise.

Where gas company subjected itself to control of corporation commission and was granted an indeterminate permit releasing it from its franchise and, after enactment of Acts 1921, No. 124, failed to apply for reinstatement of its franchise, it lost its power to enforce the rates in such franchise. Arkansas Natural Gas Co. v. Norton Co., 165 Ark. 172, 263 S.W. 775 (1924) (decision under prior law).

14-200-105. Acceptance of permit as consent to future sale.

(a) Any public utility accepting or operating under any permit, license, or franchise shall by acceptance of any permit, license, or franchise be deemed to have consented to a future purchase of its property actually used and useful for the convenience of the public by the municipality in which it is situated, upon notice of not less than ninety (90) days from the municipality of its intention to make the purchase for the just compensation and the damages, including severance damages, if any, and under the terms and conditions of purchase and sale determined by the Arkansas Public Service Commission in the manner provided in §§ 14-200-106 — 14-200-108.

(b) The public utility shall thereby be deemed to have waived the right of the necessity of such taking to be established by the verdict of a jury and to have waived all other remedies and rights relative to condemnation except such rights and remedies as are provided in § 14-200-108.

History. Acts 1935, No. 324, § 46; Pope's Dig., § 2109; A.S.A. 1947, § 73-244.

Publisher's Notes. Acts 1987, No. 110, § 10, provided that the provisions of that act repeal those parts of this section to the extent they are applicable to gas or electric utilities, but have no effect on the provisions of this section which enable a municipality to acquire a water or sewer utility. Acts 1987, No. 110 is codified as chapter 206 of title 14.

14-200-106. Municipal power to acquire, construct, or operate public utility plant.

Any municipality shall have the power, subject to the provisions of this act, to acquire by purchase or otherwise or construct and operate a public utility plant and equipment, or any part thereof, for the production, transmission, delivery, or furnishing of any public service.

History. Acts 1935, No. 324, § 47; Pope's Dig., § 2110; A.S.A. 1947, § 73-245.

Publisher's Notes. As to effect of Acts 1987, No. 110, see Publisher's Notes, § 14-200-105.

Meaning of "this act". See note to § 14-200-101.

CASE NOTES

Sewer Rates.

City did not have alternative authority to change its sewer rates under this chapter and ignore the pre-enactment notice and public hearing requirements of § 14-235-223. City of Ft. Smith v. O.K. Foods, Inc., 293 Ark. 379, 738 S.W.2d 96 (1987).

Cited: Cosgrove v. City of W. Memphis, 327 Ark. 324, 938 S.W.2d 827 (1997).

14-200-107. Election to authorize purchase by municipality.

Any municipality may determine to acquire the property of a public utility as authorized under the provisions of this act by the vote of the municipal council or city commission, taken after a public hearing, of which at least thirty (30) days' notice has been given, and ratified and confirmed by a majority of the electors voting thereon at any general or special municipal election held not less than thirty (30) days after a passage of the vote of the municipal council or city commissioners.

History. Acts 1935, No. 324, § 48; Pope's Dig., § 2111; A.S.A. 1947, § 73-246.

Publisher's Notes. As to effect of Acts 1987, No. 110, see Publisher's Notes, § 14-200-105.

Meaning of "this act". See note to § 14-200-101.

14-200-108. Compensation and damages for purchase.

(a) Whenever the Arkansas Public Service Commission has been notified by either party that a municipality has, pursuant to law, decided to purchase a plant property or facilities of a public utility and that the parties to the purchase and sale have been unable to agree on just compensation to be paid and to be received, or any other terms and conditions of the sale, the commission shall thereupon proceed to set a time and place for a public hearing after thirty (30) days' notice to the utility and municipality upon the matters of the just compensation to be paid for the taking of the property of the public utility actually used and useful for the convenience of the public, and damages, if any, caused by the severance of the property purchased or to be purchased by the municipality, and of all other terms and conditions of the purchase and sale.

(b)(1) Within a reasonable time after the time fixed for the hearings and notice, the commission shall by order fix, determine, and certify to

the municipal council, to the public utility, and to any bondholders, mortgagees, and lienors of the utility appearing upon the hearing, the just compensation, and damages, if any, to be paid for the taking and severance of the property of the public utility used and useful for the convenience of the public, and all other terms and all conditions of sale and purchase which it shall ascertain to be reasonable, which terms and conditions shall constitute a compensation and damages, and terms and conditions, to be paid.

(2) Upon the filing of the order by the commission with the clerk of the municipality, the municipality shall thereupon be obligated to make the payments and otherwise comply with the terms and conditions of the order in order to consummate the purchase.

(c) Upon the consummation of the purchase, the public utility shall execute an instrument conveying the property purchased and so paid for.

History. Acts 1935, No. 324, § 49; A.S.A. 1947, § 73-247.

Publisher's Notes. As to effect of Acts 1987, No. 110, see Publisher's Notes, § 14-200-105.

CASE NOTES

Cited: City of Helena v. Arkansas Utils. Co., 208 Ark. 442, 186 S.W.2d 783 (1945); Benton County Water Co. v. Cummings, 242 Ark. 67, 411 S.W.2d 890 (1967).

14-200-109. Municipal power to finance electric facilities system.

(a) Any municipality, board, commission, or other authority duly established by any municipality owning and operating any system for the generation, transmission, or distribution of electric power or energy may issue revenue bonds and pledge the revenues derived from the system, whether the revenues are derived from within or beyond the corporate limits of the municipality, as may be permitted or authorized by applicable law, without obtaining the approval of the Arkansas Public Service Commission.

(b) Nothing in this section should be construed to authorize any municipality, board, commission, or authority to issue or sell bonds or use the proceeds thereof to purchase, condemn, or otherwise acquire a utility plant or distribution system or portion thereof owned or operated by a public utility without the consent of the public utility.

History. Acts 1983, No. 796, §§ 1, 2; A.S.A. 1947, § 73-115.1.

Cross References. Municipal electric system financing, § 14-203-101 et seq.

14-200-110. Municipal access to utility records.

The municipal councils or city commissions shall have authority, by order, to require:

(1) From the utility certified copies of all reports, rates, classifications, rules, or other practices in force on the part of the utility at any time;

(2) From the utility for the purpose of examination or investigation all books, records, and other information as to any matter pertaining to its business or organization; and

(3) The utility to furnish from time to time, for consideration, verified itemized and detailed inventory and valuation of any or all of its property as to which the municipal council or city commission should properly have knowledge, in order to enable it to perform its duties under this chapter.

History. Acts 1921, No. 124, § 18; Pope's Dig., § 2017; A.S.A. 1947, § 73-209.

14-200-111. Rural service.

(a) Municipalities owning or operating facilities for supplying a public service or commodity to its citizens may extend its electric service into rural territory contiguous to the municipality upon order of the Arkansas Public Service Commission.

(b)(1) Rates and rules for the rural electric service shall be established from time to time by the city council, board of directors, or local water and light commission governing such municipally owned electric utility and without the approval of the Arkansas Public Service Commission.

(2) However, at no time shall the rates for rural territory so served exceed the rates charged to ratepayers receiving service within the municipality, provided, however, that, where the municipality serves less than three thousand (3,000) customers outside its corporate limits, rates may be ten percent (10%) higher than rates inside its corporate limits if, but only if, such rates for service with the ten percent (10%) surcharge are equal to, or less than, rates for service of electric public utilities adjacent to the municipality's service territory.

History. Acts 1935, No. 324, § 45; Pope's Dig., § 2108; 1985, No. 357, § 2; A.S.A. 1947, § 73-264; Acts 1989, No. 423, § 1.

Publisher's Notes. Acts 1985, No. 357, § 1, provided that the act was intended to remove from regulation by the Arkansas Public Service Commission municipal electric utility systems serving contiguous areas outside the city limits of municipalities.

CASE NOTES

ANALYSIS

Constitutionality.
In general.
Order of commission.

Constitutionality.

This section did not violate former Ark.

Const. Amend. 13 [repealed], which permitted cities of the first and second class to issue bonds for the purpose of purchasing and extending light plants and distributing systems therefor. Arkansas Utils. Co. v. City of Paragould, 200 Ark. 1051, 143 S.W.2d 11 (1940).

In General.

The right of a municipality to construct an electric distribution system outside the municipality is dependent upon statute, and, except for this section, a municipality would have no right to construct and operate such a system outside the city limits. Arkansas Utils. Co. v. City of Paragould, 200 Ark. 1051, 143 S.W.2d 11 (1940).

Order of Commission.

City cannot, without the approval of the Department of Public Utilities (now Public Service Commission), construct, operate, and maintain an electric distribution system outside the city limits and furnish current for lights and power to customers in a community outside the city already served by a private utility operating under a permit from the department (now commission). Arkansas Utils. Co. v. City of Paragould, 200 Ark. 1051, 143 S.W.2d 11 (1940) (decision prior to 1985 amendment).

14-200-112. Exemption from regulation by state commissions.

Municipalities owning or operating any public utilities are exempt from any supervision or regulation by the Arkansas Transportation Commission and the Arkansas Public Service Commission.

History. Acts 1921, No. 124, § 14; Pope's Dig., § 2013; A.S.A. 1947, § 73-265.

CHAPTER 201

MUNICIPAL BOARDS AND COMMISSIONS

SUBCHAPTER.

1. Cities of the First Class Generally.
2. Cities of the First Class — Pre-1957 Provisions.
3. Cities of the Second Class and Towns.

Cross References. Financing of electric facilities by municipalities and improvement districts, §§ 14-200-109, 14-216-101.

Municipal electric system financing, § 14-203-101 et seq.

RESEARCH REFERENCES

Am. Jur. 64 Am. Jur. 2d, Pub. Util., § 230.

Subchapter 1 — Cities of the First Class Generally

SECTION.

14-201-101. Scope of subchapter.
14-201-102. Construction of subchapter.
14-201-103. Applicability of subchapter.
14-201-104. Powers of city council.

SECTION.
14-201-105. Creation of commission — Members.
14-201-106. Compensation of commissioners.
14-201-107. Oath of commissioners.
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14-201-111. Authority to borrow, issue bonds or notes — Pledge of revenues.
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14-201-121. Use of fees and charges — Pledges — Surplus.
14-201-122. Meetings and records.
14-201-123. Quarterly report to city council.
14-201-124. Annual audit.
14-201-125. Rules and regulations for operation — Injunctions.
14-201-126. Enforcement of rights under resolution or trust indenture.
14-201-127. Bonds — Tax exemption.
14-201-128. Investment of public funds in bonds or notes.
14-201-129. Social security, pension, and retirement for employees.

Effective Dates. Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1983, No. 442, § 10: Mar. 13, 1983. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that it is essential that the authority of a commission created under Act No. 115 of 1957 with regard to the issuance of bonds and notes be clarified and more particularly provided for, and that the availability of the authorities and powers granted by this Act is immediately necessary for the protection and preservation of the health, safety and welfare of the people. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and its passage and approval."

Acts 1985, No. 889, § 7: Apr. 15, 1985. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that it is essential that the authority of a city to create a commission, and the powers of such commission, under Act No. 115 of 1957, as amended, be expanded and clarified, and that the availability of the authorities and powers granted by this Act is immediately necessary for the protection and preservation of the health, safety and welfare of the people. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

14-201-101. Scope of subchapter.

(a) Any water or waterworks commission in this state now operating under §§ 14-234-301 — 14-234-309 shall be excluded from all the provisions of this subchapter.

(b) Any city of the first class operating a municipally owned electric light plant and system and electing the commissioners thereof by popular vote prior to January 1, 1956, under the provisions of subchapter 2 of this chapter shall not be governed by this subchapter but shall continue to operate their municipally owned light plants under that subchapter and other applicable legislation and any ordinance passed pursuant to that subchapter.

(c) Any cities of the first class heretofore operating a municipally owned water system, sewer system, or any other municipally controlled improvement district, which have been consolidated under and controlled by a specially created board of directors under any special act of the General Assembly, and particularly Acts 1923, No. 487, shall be exempt from the operation of this subsection and shall continue to operate under the acts providing for their creation.

History. Acts 1957, No. 115, § 2; A.S.A. 1947, § 19-4062.

Publisher's Notes. Acts 1923, No. 487 referred to in this section was a special act and is not codified.

CASE NOTES

Cited: Cosgrove v. City of W. Memphis, 327 Ark. 324, 938 S.W.2d 827 (1997).

14-201-102. Construction of subchapter.

(a)(1) Nothing in this subchapter shall be construed to reduce or take away any of the powers or authority of the city council or other governing body, at the request of the commission, to authorize the issuance of bonds or other evidences of indebtedness under other applicable legislation.

(2) Nothing in this subchapter shall be construed to affect bonds previously so issued or other obligations previously so incurred which are ratified and confirmed.

(b) Nothing in this subchapter shall be construed to authorize any municipality or commission to issue revenue bonds or other evidences of debt or to pledge electric property, for the purpose of acquiring or paying the cost of acquisition by purchase, condemnation, or otherwise of any electric light and power plants, system, or other facilities, or any part thereof, owned or operated by another utility without the consent of such utility.

History. Acts 1957, No. 115, §§ 1, 22; 1983, No. 442, §§ 1, 7; A.S.A. 1947, §§ 19-4061, 19-4082.

14-201-103. Applicability of subchapter.

The provisions of this subchapter shall not apply to any commission, agency, or board created otherwise than pursuant to this subchapter by any city of the first class for the purpose of operating and managing the city's waterworks or electric system.

History. Acts 1957, No. 115, § 1; 1983, No. 442, § 1; 1985, No. 889, § 1; A.S.A. 1947, § 19-4061.

14-201-104. Powers of city council.

(a)(1) Any city of the first class owning and operating either a waterworks and distribution system or electrical light plant and system, or both, may by appropriate action by its city council or other governing body create a commission pursuant to this subchapter for the purpose of operating and managing the waterworks and distribution system or electrical light plant and system or both.

(2) The ordinance, resolution, or other action creating a commission shall specifically state that the commission is created pursuant to this subchapter.

(b) The city council or other governing body may enact whatever measures may be found necessary to carry out the purposes of this subchapter.

History. Acts 1957, No. 115, §§ 1, 22; 1983, No. 442, §§ 1, 7; 1985, No. 889, § 1; A.S.A. 1947, §§ 19-4061, 19-4082.

CASE NOTES

Cited: Cosgrove v. City of W. Memphis, 327 Ark. 324, 938 S.W.2d 827 (1997).

14-201-105. Creation of commission — Members.

(a)(1) Any city of the first class in which it is desired to establish such a commission, by a majority vote of the city council, shall enact an ordinance creating a utility commission to be composed of five (5) citizens who are qualified electors of the county and not less than thirty-five (35) years of age.

(2) The ordinance, resolution, or other action creating a commission shall specifically state that the commission is created pursuant to this subchapter.

(b) The commissioners shall be appointed by the mayor and confirmed by a two-thirds (⅔) vote of the city council.

(c) No member of the commission shall hold any elective or other appointive office under the municipal, county, state, or federal government while a member of the commission. No member shall be a candidate for any elective office while a member of the commission. No

member of the commission shall be an officer or employee of any private utility company.

(d) There shall be five (5) positions on the commission. The person appointed to position number one (1) shall serve for a term of two (2) years. The person appointed to position number two (2) shall serve for a term of four (4) years. The person appointed to position number three (3) shall serve for a term of six (6) years. The person appointed to position number four (4) shall serve for a term of eight (8) years. The person appointed to position number five (5) shall serve for a term of ten (10) years. Successor members shall be appointed for a term of ten (10) years.

(e) All vacancies occurring in the membership of the commission due to death, resignation, or other causes shall be filled by the mayor appointing a person to fill the unexpired term of the membership so vacated, subject to the approval of two-thirds (⅔) of the council.

(f) Successors to members of the commission whose terms have expired or who fill the unexpired portion of a term shall be appointed by the mayor, subject to the approval of two-thirds (⅔) of the city council.

History. Acts 1957, No. 115, §§ 1, 2, 5; 1961, No. 108, § 1, 1985, No. 889, § 1; A.S.A. 1947, §§ 19-4061, 19-4062, 19-4065; Acts 1989, No. 275, § 1.

14-201-106. Compensation of commissioners.

The commissioners shall receive ten dollars ($10.00) per day while attending meetings of the commission. In addition, they shall be reimbursed for expenses incurred for necessary travel, meals, and lodging while attending to the business of the commission away from the city and for other necessary expenses incurred in the performance of the business of the commission.

History. Acts 1957, No. 115, § 6; A.S.A. 1947, § 19-4066.

14-201-107. Oath of commissioners.

Before entering upon their duties as commissioners, each member of the commission shall take the oath prescribed by Arkansas Constitution, Article 19, § 20.

History. Acts 1957, No. 115, § 7; A.S.A. 1947, § 19-4067.

14-201-108. Removal from office of commissioner.

A member of the commission may be removed from office by the mayor and a two-thirds (⅔) vote of the city council for malfeasance, misfeasance, nonfeasance, or other misconduct.

History. Acts 1957, No. 115, § 8; A.S.A. 1947, § 19-4068.

14-201-109. Abolition of commission.

(a)(1) When such a utility commission has been established pursuant to this subchapter by the city council or other governing body it cannot be abolished except by a majority vote of the electorate of the city at either a special election called for the purpose or at a general election.

(2) No abolishment of any such commission, whether pursuant to the provisions of this subchapter or otherwise, shall affect the rights, properties, or obligations held or incurred by the commission.

(b) If twenty-five percent (25%) of the electors of the city petition the city council to do so, a special election shall be ordered not later than fourteen (14) days from the date on which the petition was filed to be held within thirty (30) days after such order on the question whether the utility commission shall be abolished or continued. If the petition permits, the question may be submitted at a general election. A majority vote of the electorate shall determine the question.

History. Acts 1957, No. 115, §§ 3, 4; 1985, No. 889, § 2; A.S.A. 1947, §§ 19-4063, 19-4064.

14-201-110. General powers of commission.

(a)(1) The commission shall have full power to manage, operate, improve, extend, maintain, and contract concerning the municipal waterworks and distribution system or electric light plant and system, or both, and has full power to employ or remove any and all assistants and employees and to fix, regulate, and pay their salaries.

(2) Without limiting the generality of the foregoing, the commission is empowered to acquire, construct, and equip any and all facilities, consisting of real property, personal property, or mixed property of any and every kind, which in the judgment of the commission are necessary or useful as a part of or in connection with the municipal waterworks and distribution system or electric light plant and system, or both including, without limitation, facilities for the generation of electric power and related transmission facilities, which may be located within or without the corporate boundaries of the city. In furtherance of its authority to construct facilities for the distribution or transmission of electric energy and to provide its customers reliable utility service, the commission is granted the right of eminent domain outside the corporate limits of the municipality creating the commission, but subject to the provisions of § 14-201-102(b) and only within the contiguous service territory as heretofore or hereafter granted to the municipality by the Arkansas Public Service Commission and in accordance with the procedures of §§ 18-15-301 — 18-15-308 and as those sections may be amended.

(b)(1) The commission is empowered to establish rates for water, or electricity, or both, and it may change the rates when the facts so warrant.

(2) The commission is empowered to execute long-term contracts for utility service, subject to the power to change the rates applicable to them as set out in this section.

History. Acts 1957, No. 115, §§ 9, 10; 1985, No. 889, § 3; A.S.A. 1947, §§ 19-4069, 19-4070; Acts 1989, No. 495, § 1.

Cross References. Rate-making authority, § 23-4-201.

14-201-111. Authority to borrow, issue bonds or notes — Pledge of revenues.

(a) The commission may borrow money and issue negotiable evidences of debt therefor either in the form of bonds or short-term notes, and it may execute such negotiable notes or bonds to obtain the funds needed to carry out its functions.

(b) The commission may also pledge its revenues including the income from operations, and it may mortgage waterworks or electric system property to secure the payment of money borrowed.

History. Acts 1957, No. 115 § 11; 1981, No. 425, § 48; 1983, No. 442, § 2; 1985, No. 889, § 4; A.S.A. 1947, § 19-4071.

14-201-112. Bonds or notes — Issuance generally.

The issuance of bonds or notes shall be by a resolution of the commission.

History. Acts 1957, No. 115, § 11; 1981, No. 425, § 48; 1983, No. 442, § 2; A.S.A. 1947, § 19-4071.

14-201-113. Bonds or notes — Terms and conditions.

(a) The bonds or notes may:

(1) Be coupon bonds payable to bearer, subject to registration as to principal or as to principal and interest, or fully registered bonds without coupons;

(2) Contain exchange privileges;

(3) Be issued in one (1) or more series;

(4) Bear such date or dates;

(5) Mature at such time or times;

(6) Bear interest at such rate or rates;

(7) Be in such form;

(8) Be executed in such manner;

(9) Be payable in such medium of payment, at such place or places;

(10) Be subject to such terms of redemption in advance of maturity at such prices; and

(11) Contain such terms, covenants, and conditions as the resolution may provide, including, without limitation, those pertaining to:

(A) The custody and application of the proceeds of the bonds or notes;

(B) The collection and disposition of revenues;

(C) The maintenance of various funds and reserves;

(D) The investing and reinvesting of any moneys during periods not needed for authorized purposes;

(E) The nature and extent of the security;

(F) The rights, duties, and obligations of the commission and the trustee for the holders or registered owners of the bonds or notes; and

(G) The rights of the holders or registered owners of the bonds or notes.

(b) The bonds and notes shall have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to the provisions for registration set forth herein.

History. Acts 1957, No. 115, § 11; 1981, No. 425, § 48; 1983, No. 442, § 2; A.S.A. 1947, § 19-4071.

14-201-114. Bonds or notes — Trust indenture.

(a) The authorizing resolution may provide for the execution of a trust indenture by the commission with a bank or trust company within or without the State of Arkansas.

(b) The trust indenture may control the priority between successive issues and may contain any other terms, covenants, and conditions that are deemed desirable by the commission, including, without limitation, those pertaining to:

(1) The custody and application of the proceeds of the bonds or notes;

(2) The collection and disposition of revenues;

(3) The maintenance of various funds and reserves;

(4) The investing and reinvesting of any moneys during periods not needed for authorized purposes;

(5) The nature and extent of the security;

(6) The rights, duties, and obligations of the commission and the trustee for the holders or registered owners of the bonds; and

(7) The rights of the holders or registered owners of the bonds or notes.

History. Acts 1957, No. 115; § 11, 1981, No. 425, § 48; 1983, No. 442, § 2; A.S.A. 1947, § 19-4071.

14-201-115. Bonds or notes — Contents.

It shall be plainly stated on the face of each bond or note that it has been issued under the provisions of this subchapter and that it does not constitute an indebtedness of the city within any constitutional or statutory limitation.

History. Acts 1957, No. 115, § 11; 1981, No. 425, § 48; 1983, No. 442, § 2; 1985, No. 889, § 4; A.S.A. 1947, § 19-4071.

14-201-116. Bonds or notes — Sale.

The bonds or notes may be sold at public or private sale, for such price, including, without limitation, sale at a discount, and in such manner as the commission may determine by resolution.

History. Acts 1957, No. 115, § 11; 1981, No. 425, § 48; 1983, No. 442, § 2; A.S.A. 1947, § 19-4071.

14-201-117. Bonds or notes — Nature of indebtedness.

(a) The bonds and notes shall not be general obligations of the city, but shall be special obligations payable from and secured by a pledge of revenues derived from the city's waterworks or electric system and otherwise secured as provided in this subchapter.

(b) In no event shall the bonds and notes constitute an indebtedness of the city within the meaning of any constitutional or statutory limitation.

History. Acts 1957, No. 115, § 11; 1981, No. 425, § 48; 1983, No. 442, § 2; 1985, No. 889, § 4; A.S.A. 1947, § 19-4071.

14-201-118. Bonds or notes — Priority among issues.

Priority between successive issues may be controlled by the resolution.

History. Acts 1957, No. 115, § 11; 1981, No. 425, § 48; 1983, No. 442, § 2; A.S.A. 1947, § 19-4071.

14-201-119. Refunding bonds or notes.

(a) Bonds or notes may be issued for the purpose of refunding any bonds or notes issued under this subchapter, or for the purpose of refunding any bonds or notes issued by the city creating the commission secured, in whole or in part, by waterworks or electric system revenues.

(b) Refunding bonds or notes may be combined with bonds or notes issued under the provisions of §§ 14-201-112 and 14-201-113 into a single issue.

(c)(1) When refunding bonds or notes are issued, the bonds or notes may either be sold or delivered in exchange for the bonds or notes being refunded.

(2) If sold, the proceeds may be either applied to the payment of the bonds or notes being refunded or deposited in escrow for the retirement thereof.

(d) All refunding bonds and notes shall in all respects be issued and secured in the manner provided for other bonds and notes issued under this subchapter and shall have all the attributes of the bonds and notes.

(e) The resolution under which the refunding bonds or notes are issued may provide that any of the refunding bonds or notes shall have

the same priority of lien on and security interest in waterworks or electric system revenues and the waterworks or electric system as was enjoyed by the bonds or notes refunded thereby.

History. Acts 1957, No. 115, § 11; 1981, No. 425, § 48; 1983, No. 442, § 2; 1985, No. 889, § 4; A.S.A. 1947, § 19-4071.

14-201-120. Default in payment of notes or bonds — Receiver.

(a) If the commission defaults in the payment of any note or bond issued by it in either principal or interest, the holder of the note or bond or the trustee or mortgagee in any pledge, mortgage, or deed of trust given to secure it may bring suit for the enforcement thereof in the chancery court. Upon the filing of the suit, the holder is entitled to the immediate appointment of a receiver with power to take charge of all property of the commission and to operate it and collect the revenues arising therefrom.

(b) The appointment of a receiver shall be made as a matter of right, upon proof only of the default and of the plaintiff's right to bring suit as provided in this section.

(c) The receiver may be authorized to charge for service the rates in force at the time of his appointment; but, if the rates have been reduced to the prejudice of persons holding the obligations of the commission, the court may authorize the receiver to charge rates in accordance with the schedule in force when the obligation sued on was contracted, if the restoration of the higher rate is necessary to protect the rights of creditors.

History. Acts 1957, No. 115, § 12; A.S.A. 1947, § 19-4072.

14-201-121. Use of fees and charges — Pledges — Surplus.

(a) For so long as any bond or notes are outstanding and unpaid, the rates, fees, and charges for water and electricity charged and collected by the commission shall be fixed so as to provide revenues sufficient to pay all costs of and charges and expenses in connection with the proper operation and maintenance of the waterworks and electric light systems, respectively, and all necessary repairs, replacements, or renewals thereof; to pay when due the principal of, premium, if any, and interest on all bonds payable from such revenues; to create and maintain revenues as may be required by any resolution or trust indenture authorizing or securing bonds or notes; and to pay any and all amounts which the commission may be obligated to pay from such revenues by law or contract.

(b) Any pledge made by the commission pursuant to this subchapter shall be valid and binding from the date the pledge is made. The revenues so pledged and then held or thereafter received by the commission or any fiduciary on its behalf shall immediately be subject to the lien of the pledge without any physical delivery thereof or further

act, and the lien of the pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the commission without regard to whether such parties have notice thereof. The resolution, trust indenture, or other instrument by which a pledge is created need not be filed or recorded in any manner.

(c) Any surplus remaining after the expenditures authorized by this subchapter may be made available for other purposes of the city by resolution of the city council.

History. Acts 1957, No. 115, § 13; 1983, No. 442, § 3; A.S.A. 1947, § 19-4073.

14-201-122. Meetings and records.

All meetings of the commission shall be open to the public, and all rules, regulations, and records of the commission are public records.

History. Acts 1957, No. 115, § 17; A.S.A. 1947, § 19-4077.

14-201-123. Quarterly report to city council.

The commission shall report to the city council on each calendar quarter of the year on the state of the operations of the commission and its financial affairs.

History. Acts 1957, No. 115, § 18; A.S.A. 1947, § 19-4078.

14-201-124. Annual audit.

At the end of each fiscal year, the commission shall cause an audit to be made of the financial affairs of the commission by a certified public accountant. Five (5) copies of the report shall be retained in the office of the commission, and there shall be made available a copy to the mayor and to each member of the city council.

History. Acts 1957, No. 115, § 19; A.S.A. 1947, § 19-4079.

14-201-125. Rules and regulations for operation — Injunctions.

(a) The commission shall adopt such rules and regulations as it deems necessary and proper for the operation and management of the waterworks and distribution system or electric light plant and system, or both, and it is empowered to change the rules and regulations at any time the commission desires to do so.

(b) The commission may obtain prohibitive and mandatory injunctions against any person for refusal to comply with the regulations of the commission.

History. Acts 1957, No. 115, § 20; A.S.A. 1947, § 19-4080.

14-201-126. Enforcement of rights under resolution or trust indenture.

Any holder or registered owner of bonds or notes, or coupons appertaining to bonds, except to the extent the rights herein given may be restricted by the resolution or trust indenture authorizing or securing such bonds or notes or coupons, may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the State of Arkansas or granted hereunder, or, to the extent permitted by law, under such resolution or trust indenture authorizing or securing such bonds or notes or under any agreement or other contract executed by the commission pursuant to this subchapter, and may enforce and compel the performance of all duties required by this subchapter or by such resolution or trust indenture to be performed by the commission or by any officer thereof, including the fixing, charging, and collecting of rates, fees, and charges.

History. Acts 1957, No. 115, § 14; 1983, No. 442, § 4; A.S.A. 1947, § 19-4074.

14-201-127. Bonds — Tax exemption.

Bonds and notes issued under the provisions of this subchapter, and the interest thereon, shall be exempt from all state, county, and municipal taxes, including property, income, inheritance, and estate taxes.

History. Acts 1957, No. 115, § 15; 1983, No. 442, § 5; A.S.A. 1947, § 19-4075.

14-201-128. Investment of public funds in bonds or notes.

Any municipality or any board, commission, or other authority duly established by ordinance of any municipality, or the board of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any municipality, or the board of trustees of any retirement system created by the General Assembly may, in its discretion, invest any of its funds in bonds or notes issued under the provisions of this subchapter. Bonds and notes issued under the provisions of this subchapter shall be eligible to secure the deposit of public funds.

History. Acts 1957, No. 115, § 16; 1983, No. 442, § 6; A.S.A. 1947, § 19-4076.

14-201-129. Social security, pension, and retirement for employees.

The commission is authorized to provide a plan of social security, old age pension, or retirement pay for a part or all of the employees under its jurisdiction in accordance with § 14-234-310.

History. Acts 1957, No. 115, § 21; A.S.A. 1947, § 19-4081.

Subchapter 2 — Cities of the First Class — Pre-1957 Provisions

SECTION.
14-201-201. Construction.
14-201-202. Existing boards continued.
14-201-203. Commission to operate utilities authorized.
14-201-204. Creation of board or commission — Members — Vacancies.
14-201-205. Meetings of board — Organization.
14-201-206. Powers of board and city council.
14-201-207. Employees of board — Salary of board members.
14-201-208. Reports of board.

14-201-201. Construction.

(a)(1) This subchapter shall not be construed to repeal or amend any valid local or special act heretofore passed pertaining to the operation, control, or management of any light or water plant or sewer system nor to the creation or election of any board of directors or like board elected or appointed pursuant to any special act or acts, nor to plants or systems organized as improvement districts.

(2) Any acts providing for election of members of any boards or commissions shall remain in full force and effect.

(b) Nothing in this subchapter shall be construed to prohibit the city council of any city subject to the terms of this subchapter from repealing or amending any act which it may have passed pursuant to the authority conferred by this subchapter.

History. Acts 1953, No. 562, §§ 2, 12; A.S.A. 1947, §§ 19-4052, 19-4060.

14-201-202. Existing boards continued.

(a)(1) If, in any municipal corporation subject to the provisions of this subchapter, there shall be in existence a board or commission created by or acting under any existing ordinance passed by the city council of the city and approved by its mayor, and if the members of the board shall have been elected by popular vote pursuant to any existing law, ordinance, or practice, and, if the board shall be actually operating and controlling the municipally owned plant or plants upon the passage of this act, the members of the board so elected shall constitute the membership of the board as created under § 14-201-204.

(2) Their terms shall expire in accordance with the dates of their election to the board by popular vote at any prior city election.

(b) If, prior to the passage of this act, any board of five (5) members shall be in existence as last hereinabove provided under this section and shall have elected its president and secretary or other officers, then the president, secretary, and other officers shall remain in office for the term to which they have been elected and thereafter shall be elected by the board annually.

History. Acts 1953, No. 562, § 4; A.S.A. 1947, § 19-4054.

Publisher's Notes. Concerning the term "the passage of this act," Acts 1953, No. 562 was signed by the Governor on March 31, 1953, and took effect on June 11, 1953.

14-201-203. Commission to operate utilities authorized.

(a) A city of the first class may, by ordinance, create a commission or commissions to operate, control, and supervise such of its municipally owned water, sewer, or light plants as may be prescribed by ordinance which are not now being operated by a commission created by or pursuant to valid special or local acts of the General Assembly.

(b) If either a municipally owned water or sewer or light plant belonging to a city of the first class is being operated at the time of the passage of this act by a commission or commissions created by or pursuant to valid special or local acts of the General Assembly, then the power of the city to create a commission shall be limited to such plants as are not now being operated by a commission created by or pursuant to valid special or local acts of the General Assembly.

(c) Nothing contained in this section shall be construed to supersede management of any such municipally owned water, sewer, or light plant under or pursuant to any valid local or special act referred to in § 14-201-201.

History. Acts 1953, No. 562, § 1, A.S.A. 1947, § 19-4051.

Publisher's Notes. Concerning the term "time of the passage of this act," Acts 1953, No. 562 was signed by the Governor on March 31, 1953, and took effect on June 11, 1953.

As to validation of board of public utilities having five members in city of the first class with a population not over 8,000, see Acts 1959, No. 185.

14-201-204. Creation of board or commission — Members — Vacancies.

(a) Any city of the first class subject to the provisions of this subchapter owning, operating, or controlling a municipal light and power plant, or sewer plant, or water plant is authorized by a proper ordinance passed by the city council of the city and approved by its mayor to create a board consisting of five (5) members for the purpose of directing, managing, controlling, and operating the plant within the city or in any area in which the city may be lawfully authorized to operate outside the city limits thereof, except as provided in § 14-201-202.

(b)(1) In the ordinance creating the board or commission of five (5) members, the city council shall designate the members thereof to hold office for the first term and shall fix the term of office for one (1) member of the board at one (1) year; one (1) member at two (2) years; one (1) member at three (3) years; one (1) member at four (4) years; and one (1) member at five (5) years and, in each instance, until their respective successors have been chosen and qualified.

(2) Thereafter, as the terms of office of the members of the board expire, the successor to each member shall be chosen for a period of five (5) years.

(c) Unless otherwise provided in the ordinance creating the board or commission, each member shall be elected by popular vote in the same manner as the mayor of the city shall be chosen. The election shall be held at the regular city election. The candidates for election shall be voted for by the same qualified voters and in the same way and manner as designated by law for voting for the office of mayor of the city.

(d) Vacancies occurring shall be filled by appointment by the city council, and the person appointed to fill a vacancy under this section or under § 14-201-202 shall serve until the next regular city election at which a successor may be elected and until a successor shall have been elected and qualified unless the ordinance creating the commission shall have provided for a different method for filling vacancies on the commission.

History. Acts 1953, No. 562, § 3; A.S.A. 1947, § 19-4053.

14-201-205. Meetings of board — Organization.

(a) When the city council of a city, subject to the provisions of this subchapter, shall have passed the initiatory ordinance as provided in this subchapter, the board therein provided shall meet immediately.

(b) A quorum of the board is authorized, upon reasonable notice to the other members of the board of the time, place, and purpose of any meeting, to transact any and all legal business which may come before either the first meeting of the board or any subsequent meeting thereof.

(c) At its first meeting, the board shall designate one (1) of its members as chairman, whose duty it shall be to preside over all meetings had and held by the board.

(d)(1) The board shall designate a certain time for a regular meeting each month or may adjourn from time to time and reassemble pursuant to adjournment.

(2) The president of the board or any three (3) members thereof may call a meeting of the board at such time as may be necessary in the judgment of the person calling the meeting upon reasonable notice of the time, place, and purpose of the meeting.

(3) No notice shall be required of any regular monthly meeting previously designated by the board.

(e) A record of the proceedings of each regular, adjourned, or called meeting shall be kept by some person who may either be a member of the board selected and chosen as secretary thereof by the board, or by such person as the board may designate as secretary, who need not be a member of the board.

(f) Officers elected by the board shall hold office for a term of one (1) year or until their successors shall be elected and qualified. However, any secretary of the board who shall not be a member thereof may be removed by the board at any time.

History. Acts 1953, No. 562, § 5; A.S.A. 1947, § 19-4055.

14-201-206. Powers of board and city council.

(a) The board created pursuant to this subchapter shall have full power to operate and control the plant entrusted to its direction by the city ordinance creating the board as provided in § 14-201-203.

(b) Subject to such restrictions as may be prescribed in the ordinance creating the board, the board shall have full power to buy and pay for out of the earnings or revenues of the plants for the welfare and benefit of the citizens and inhabitants of the municipal corporation, and the board may purchase and pay for out of the revenues derived from the operation of the power plants, all necessary equipment needed in the operation of the plants and for such lands as may be necessary and the board may also sell any real or personal property, not necessary to be used in the operation of the plant, but shall not sell or rent the right to own, use, and operate the necessary equipment of the plant.

(c) Except as its powers may be limited by city ordinance, the board shall have the same rights and powers with reference to the nature, extent, and performance of its duties and with reference to the employment of the employees and other necessary assistants as is now provided by law with reference to the boards of commissioners of municipal improvement districts.

(d) Nothing in this subchapter shall be construed to limit or impair the rights of the city council to approve any rates or charges for electric, water, or sewer service.

History. Acts 1953, No. 562, §§ 6-8; A.S.A. 1947, §§ 19-4056 — 19-4058.

Publisher's Notes. Subsection (d) of this section may be affected by § 23-4-201 which vests exclusive authority to determine electric and sewer utility rates in the Arkansas Public Service Commission.

CASE NOTES

Rate Schedules.

Where the right to approve and confirm the rate schedule and any changes therein by the commission was reserved by the municipal council pro tem to the administrative functions of the commission under authority granted by the legislature and such reservation being simply restrictions placed on the administrative rights and duties of the commission as from time to time performed by it, the approval and confirmation of the cost adjustment for

electricity by the city council were legally expressed by resolution and did not require form of municipal ordinance. Kruzich v. West Memphis Util. Comm'n, 257 Ark. 187, 515 S.W.2d 71 (1974).

14-201-207. Employees of board — Salary of board members.

(a) Subject to such restrictions or limitations as may be imposed by municipal ordinances, the board created pursuant to this subchapter shall have plenary powers with reference to the selection, supervision, and payment of compensation for all employees required in connection with the operation of the municipal plants under its jurisdiction.

(b)(1) Any ordinance passed by the city council may make additional provisions for the control and operation of light, water, or sewer plants and may provide a limitation as to salaries or wages to be paid by the board including salaries to be paid to members of the board for their services as members of the board.

(2) Unless otherwise limited or authorized by city ordinances, the salaries to be paid to members of the board shall be ten dollars ($10.00) per month or five dollars ($5.00) for each meeting attended by each board member, whichever is less.

History. Acts 1953, No. 562, § 7; A.S.A. 1947, § 19-4057.

14-201-208. Reports of board.

The board shall make due report to the city council with reference to the conditions and affairs of the municipal plants under its control at whatever time and in whatever manner the city council may designate.

History. Acts 1953, No. 562, § 9; A.S.A. 1947, § 19-4059.

Subchapter 3 — Cities of the Second Class and Towns

SECTION.
14-201-301. Construction.
14-201-302. Creation of board.
14-201-303. Petition for election to adopt subchapter.
14-201-304. Notice of election.
14-201-305. Form of ballots — Manner of voting.
14-201-306. Conduct of election — Board created upon majority vote.
14-201-307. Calling election to elect board members — Notice of election.
14-201-308. Qualifications of voters.
14-201-309. Supplies for elections — Cost.
14-201-310. Ballots in duplicate — Conduct of election.
14-201-311. Election officials.
14-201-312. Members of board — Qualifications.
14-201-313. Nominations to board membership.
14-201-314. Interest of board members in contracts unlawful — Penalty.
14-201-315. Terms of initial members.
14-201-316. Election of succeeding members — Term — Conduct of election — Notice.
14-201-317. Commencement of term — Oath of office.
14-201-318. Vacancies.
14-201-319. Compensation of members.
14-201-320. Officers of board — Meetings — Minutes.

SECTION.
14-201-321. Subsequent election to create board.
14-201-322. General powers of board.
14-201-323. Agents and employees.
14-201-324. Deposit of moneys — Bond — Checks.
14-201-325. Disposition of profits.
14-201-326. Enlargements of plants and systems.
14-201-327. Sale or mortgage of plants and machinery.
14-201-328. Accounting books — Annual audit.
14-201-329. Suits for misappropriation or misuse of money.
14-201-330. Power to sue and be sued — Hiring of attorneys.

Publisher's Notes. Acts 1939, No. 95, § 32, provided that §§ 14-89-601 — 14-89-603, insofar as they would apply to water and electric light plants, the control and operation of which may be placed in any board that may be created under the terms of this subchapter, are repealed.

Cross References. Operation of water and electric light plants in cities of the first class, § 14-91-401.

Effective Dates. Acts 1939, No. 95, § 36: approved Feb. 16, 1939. Emergency clause provided: "It being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared and this act shall take effect and be in force from and after its passage."

Acts 1975, No. 928, § 1: effective simultaneously with the Arkansas Criminal Code on Jan. 1, 1976.

RESEARCH REFERENCES

C.J.S. 87 C.J.S., Towns, §§ 53-59.

CASE NOTES

Board Not Mandatory.

A city has express statutory power under § 14-91-402 to own and operate light and water plants and may delegate this authority to an agency without creating a board of public utilities as provided in this subchapter. Adams v. Bryant, 236 Ark. 859, 370 S.W.2d 432 (1963).

14-201-301. Construction.

This subchapter shall not be construed to repeal or amend any local and special act passed before February 16, 1939, pertaining to the operation, control, or management of any light or water plant or sewer system in this state or to the creation or election of any board of directors or like board for the management, control, and operation of any light or water plant or sewer system being controlled or operated under the terms of such local or special act.

History. Acts 1939, No. 95, § 35; A.S.A. 1947, § 19-4033.

14-201-302. Creation of board.

(a) In each of the cities of the second class and incorporated towns of this state where electric light plants or water plants or sewerage systems or electric light plants and water plants and sewerage systems are owned by any improvement district or districts, or such districts having been paid out and now under control of the city or town council wherein the districts are located, having been constructed or acquired by the district or districts in whole or in part with funds derived from taxes or assessments of benefits against the real property in the improvement district or districts, there may be created a board to be known as "the board of public utilities."

(b) The board shall have the sole and exclusive control of the maintenance, enlargement, and operations of the plants, subject to the provisions and conditions of this subchapter.

(c) This subchapter shall not apply to districts that have outstanding bonds unpaid.

History. Acts 1939, No. 95, § 1; A.S.A. 1947, § 19-4001.

CASE NOTES

Provisions Not Mandatory.

This section does not make compulsory the operation of utilities by the board of public utilities referred to therein but simply provides that such a board may be created. Adams v. Bryant, 236 Ark. 859, 370 S.W.2d 432 (1963).

Cited: Cosgrove v. City of W. Memphis, 327 Ark. 324, 938 S.W.2d 827 (1997).

14-201-303. Petition for election to adopt subchapter.

(a) When fifty (50) or more owners of real property in any improvement district or districts in any city of the second class or incorporated town in this state shall desire that the provisions of this subchapter be made applicable to the electric lights plants, water plants, and sewerage systems or to the electric light plant, water plant or sewerage system in the city or town, they shall file with the county board of election commissioners in the county in which the city or town lies, a petition signed by them praying that board of election commissioners call an election in the improvement district or districts to determine whether the provisions of this subchapter shall be made applicable to the light plant, water plant, or sewage system or the light plants, water plants, and sewage systems of the district or districts.

(b) The signers of the petition shall all be residents of the area embraced in one (1) or more of the improvement districts to be affected, but it shall not be necessary that they own real property in the district in which they reside, it being sufficient if they own real property in at least one (1) of the districts to be affected.

History. Acts 1939, No. 95, § 5; A.S.A. 1947, § 19-4005.

14-201-304. Notice of election.

Within five (5) days after the filing of the petition, the county board of election commissioners shall call an election to be held in the city or town at a time not less than thirty (30) days nor more than sixty (60) days from the date of the filing of the petition. The board shall give due notice thereof by publication in some newspaper published in the city or town, weekly for two (2) weeks, stating in the notice the time and place where the election will be held and the purpose thereof; and the election may be held at any place in the city or town designated by the board whether the place be within or without the boundaries of the improvement district or districts. If no newspaper is published in the city or town, notice of the election shall be given by printed notices posted at ten (10) public places therein for more than twenty (20) days prior to the election.

History. Acts 1939, No. 95, § 6; A.S.A. 1947, § 19-4006.

14-201-305. Form of ballots — Manner of voting.

(a) The county board of election commissioners shall provide ballots to be used at the election upon which shall be printed the following words:

"FOR THE CREATION OF A BOARD OF PUBLIC UTILITIES."

"AGAINST THE CREATION OF A BOARD OF PUBLIC UTILITIES."

(b) There shall also be printed upon the ballots the necessary words and figures to show the date of the election and the city or town wherein the election is to be held, and no other words or figures shall be printed thereon.

(c) Persons desiring to vote for the creation of a board of public utilities shall strike out the words "Against the Creation of a Board of Public Utilities" and those desiring to vote against the creation of a board of public utilities shall strike out the words "For the Creation of a Board of Public Utilities."

History. Acts 1939, No. 95, § 7; A.S.A. 1947, § 19-4007.

14-201-306. Conduct of election — Board created upon majority vote.

(a) The polls at the election shall be opened at 8:00 A.M. on the day set by the county board of election commissioners for the holding of the election and shall be closed at 6:00 P.M. on that date. Immediately thereafter and on the same day the judges and clerks shall count the ballots cast at the election and announce the result thereof and shall immediately thereafter file with the secretary of the board of election commissioners of the county and with the city clerk or recorder of the city or town a certificate showing the result of the election.

(b) If at the election a majority of the votes cast shall be for the creation of a board of public utilities, the board shall be deemed to have been created and the provisions of this subchapter shall extend to and control the operation and maintenance of all the electric light plants, water plants and sewerage systems or the electric light plant, water plant and sewerage system belonging to any improvement district or districts in the city or town.

History. Acts 1939, No. 95, § 8; A.S.A. 1947, § 19-4008.

14-201-307. Calling election to elect board members — Notice of election.

(a) Immediately after the creation of the board of public utilities pursuant to § 14-201-306, the county board of election commissioners shall call an election to be held in the city or town at a time not less than thirty (30) days nor more than sixty (60) days distant for the purpose of electing five (5) members to compose the board of public utilities.

(b) Notice of the election shall be given in the same manner as provided in § 14-201-304 for notice of the election to create the board of public utilities.

History. Acts 1939, No. 95, §§ 8, 9; A.S.A. 1947, §§ 19-4008, 19-4009.

14-201-308. Qualifications of voters.

(a) Only owners of real estate in one (1) or more of the improvement districts to be affected thereby and who reside in one (1) of the districts whose light plant, water plant, or sewerage system is to be controlled and operated by the board shall be allowed to vote at any of the elections provided for by this subchapter. Each of such owners of real property shall be entitled to cast one (1) vote for each one dollar ($1.00) of state and county taxes he shall have paid upon such real estate owned by him in the district or districts during the tax paying period next preceding the year of such elections. No vote shall be cast for property which lies within the district but which was not assessed with benefits for the improvements therein.

(b) The judges holding the election shall have access to the assessments of benefits, tax books, other records of the district, and the state and county tax books for the purpose of determining who shall be entitled to vote and the number of votes to be cast by any voter. In the event of a dispute as to the ownership of any tract or parcel of land in any of the districts, the ownership shall be deemed to be in the person having the possession thereof at the time of the election and paying the state and county taxes thereon during the taxpaying period next preceding the year of the election.

History. Acts 1939, No. 95, §§ 12, 13; A.S.A. 1947, §§ 19-4012, 19-4013.

14-201-309. Supplies for elections — Cost.

The board of election commissioners shall provide all necessary ballots, poll books, and tally sheets for the holding of elections herein provided for and the expense thereof, and all costs of the election shall be paid by the city or town council of the city or town where such election is held from the funds of the light and water plants and sewage systems under its control.

History. Acts 1939, No. 95, § 11, A.S.A. 1947, § 19-4011.

14-201-310. Ballots in duplicate — Conduct of election.

In the conduct of the election, all ballots shall be in duplicate; duplicate ballot boxes shall be provided for use at the election and, generally, unless in conflict with this subchapter, the laws of the State of Arkansas pertaining to the conduct of general elections and to the preservation of poll books, tally sheets, and ballots shall apply to all elections held hereunder.

History. Acts 1939, No. 95, § 19; A.S.A. 1947, § 19-4019.

14-201-311. Election officials.

(a) Not less than ten (10) days before the date fixed by the board of election commissioners for the holding of any of the elections herein provided for, the board shall appoint three (3) persons of lawful age who reside and own real estate in one (1) of the districts, whose light plant, water plant, or sewerage system is to be controlled and operated by the board of public utilities herein provided for, as judges to hold the election and two (2) persons possessing like qualifications as clerks of the election and shall designate the place in the city or town where the election shall be held.

(b) Should any judge or clerk appointed to hold any of the elections provided for herein fail to appear at the time for opening of the polls, a majority of the persons entitled to vote at the election then present at the polls may select some other person possessing the qualifications herein prescribed to serve as judge or clerk in his stead.

History. Acts 1939, No. 95, §§ 15, 16; A.S.A. 1947, §§ 19-4015, 19-4016.

14-201-312. Members of board — Qualifications.

(a) Boards of public utilities, when created in the manner set out in this subchapter, shall be composed of five (5) members each of whom, at the time of his election shall not be less than twenty-five (25) years old and a resident and owner of real estate in one (1) or more of the improvement districts owning the light or water plants or sewerage systems coming under the control of the board of public utilities as provided.

(b) No officeholder, either state, county, or municipal, whether elected or appointed, or his deputy, shall be eligible to membership on any board of public utilities created under this subchapter.

History. Acts 1939, No. 95, §§ 2, 14; A.S.A. 1947, §§ 19-4002, 19-4014.

14-201-313. Nominations to board membership.

Nominations of candidates for membership on the board of public utilities shall be made by filing of a petition signed by not less than ten (10) owners of real property in one (1) or more of the improvement districts whose plants or systems will be placed under the control of the board with the county board of election commissioners. All nominations shall close on and no nominating petitions shall be filed after the tenth day preceding the election.

History. Acts 1939, No. 95, § 10; A.S.A. 1947, § 19-4010.

14-201-314. Interest of board members in contracts unlawful — Penalty.

(a) It shall be unlawful for any member of the board of public utilities to be directly or indirectly interested in any contract with the board.

(b) Any member engaging in conduct constituting an offense under this section commits a Class D felony. Further, his office shall thereby become vacant, and he shall forever be ineligible as a member of any board of public utilities created under this subchapter.

History. Acts 1939, No. 95, § 33; 1975, No. 928, § 6; A.S.A. 1947, § 19-4032.

Publisher's Notes. Acts 1975, No. 928, § 2, provided that, notwithstanding that all or part of a statute defining a criminal offense is amended or repealed by this act, the provisions so amended or repealed shall remain in force for the purpose of authorizing the prosecution, conviction, and punishment of a person committing an offense under the provisions prior to the effective date of this act.

14-201-315. Terms of initial members.

The candidate receiving the highest number of votes at the election shall serve as a member of the board for five (5) years; the candidate receiving the next highest number of votes shall serve as a member of the board for four (4) years; the candidate receiving the next highest number of votes shall serve as a member of the board for three (3) years; the candidate receiving the next highest number of votes shall serve as a member of the board for two (2) years; and the candidate receiving the next highest number of votes shall serve as a member of the board for one (1) year.

History. Acts 1939, No. 95, § 17;
A.S.A. 1947, § 19-4017.

14-201-316. Election of succeeding members — Term — Conduct of election — Notice.

(a) In all cities and towns where a board of public utilities shall be created under the provisions of this subchapter, there shall be held, on a day to be designated by the county board of election commissioners not less than thirty (30) days nor more than sixty (60) days before the expiration of the term of office of any member of the board of public utilities, an election for the purpose of electing a member of the board to succeed the outgoing member.

(b) The members of the board so elected at such elections shall serve as members thereof for a period of five (5) years or until their successors are elected and qualified in the manner herein provided.

(c)(1) Elections shall be held under the authority of the county board of election commissioners as herein provided for in the election of members of the board in the first instance, and the county board of election commissioners shall provide the ballots, ballot boxes, tally sheets, and poll books for the election, the expense of which shall be paid by the board of public utilities out of any funds in its hands.

(2) The judges and clerks for the election shall be owners of real property in one (1) or more of the improvement districts to be affected by the election. The election shall be conducted and the returns thereof made as provided in this subchapter for the first election of members of the board.

(d) Notice of the election shall be given in the same manner and for the same length of time as provided in § 14-201-304 for notice of the election to create the board of public utilities.

History. Acts 1939, No. 95, § 23;
A.S.A. 1947, § 19-4023.

14-201-317. Commencement of term — Oath of office.

The term of office of the members of the board shall begin on the first Tuesday following their election, at which time they shall meet and take the oath prescribed by Arkansas Constitution, Article 19, § 20, and shall file a copy of the oath with the city clerk or recorder.

History. Acts 1939, No. 95, § 18; A.S.A. 1947, § 19-4018.

14-201-318. Vacancies.

If any member of the board shall cease to be a resident or owner of real estate in any of the improvement districts upon which his qualification as to ownership of property and residence shall be based or, if he shall resign from the board, his office shall be deemed vacant and any vacancy upon the board for that reason specified shall be filled by a majority vote of the remaining members thereof.

History. Acts 1939, No. 95, § 3; A.S.A. 1947, § 19-4003.

14-201-319. Compensation of members.

(a) The sole compensation of each member of the board shall be the sum of five dollars ($5.00) per month.

(b) The board, by a vote of a majority of its members, may fix a reasonable sum for the secretary of the board to compensate him for the clerical duties required of him.

History. Acts 1939, No. 95, § 26; A.S.A. 1947, § 19-4026.

14-201-320. Officers of board — Meetings — Minutes.

(a) At the first meeting of the board, one (1) of its members shall be elected as chairman and one (1) member shall be elected as secretary and treasurer.

(b) The board shall fix the time for its regular meetings to be held not less than once every month. Special meetings may be called by the chairman at any time upon two (2) days' notice to all members.

(c) The chairman shall preside at all meetings, and the secretary shall keep a minute book in which shall be inscribed a record of the minutes of all meetings of the board. The book shall be at all times subject to the inspection of any taxpayer.

History. Acts 1939, No. 95, § 20; A.S.A. 1947, § 19-4020.

14-201-321. Subsequent election to create board.

In event of a failure of the owners of real estate as provided in this subchapter to create a board of public utilities under the provisions of this subchapter at any election called for that purpose, the failure shall not be held to exhaust their powers to create the board at another election which may be called as provided in this subchapter. No election shall be called to be held within less than two (2) years after holding of the first or subsequent elections.

History. Acts 1939, No. 95, § 21; A.S.A. 1947, § 19-4021.

14-201-322. General powers of board.

The board of public utilities:

(1) May do and perform all things necessary to enforce the collection of the rates to be charged for the service rendered by any and all plants or sewerage systems under its jurisdiction; and

(2) Shall do any and all things necessary to the successful operation and maintenance of the electric light plants, water plants, or sewerage systems.

History. Acts 1939, No. 95, § 25; A.S.A. 1947, § 19-4025.

Cross References. Rate-making authority, § 23-4-201.

CASE NOTES

Bonds.

The board of public utilities has the sole and exclusive control of the maintenance and operations of systems for electricity, water, and sewer, but does not have authority to issue bonds for raising money to finance them. Portis v. Board of Pub. Utils., 213 Ark. 201, 209 S.W.2d 864 (1948).

14-201-323. Agents and employees.

The board, in the operation of the plant or plants or sewerage systems, from time to time may employ agents, servants, and employees as it may deem necessary in the operation of the plant and may likewise discharge such agents, servants, or employees and such others as may have been employed in the operation of the plants or sewerage systems at the time of the creation of the board. No person related by blood or marriage to any member of the board shall ever be employed by it for any purpose.

History. Acts 1939, No. 95, § 24; A.S.A. 1947, § 19-4024.

Cross References. Employees under Civil Service Commission, § 14-50-101 et seq.

14-201-324. Deposit of moneys — Bond — Checks.

(a) All moneys derived from the operation of utilities under this subchapter shall be deposited in some solvent bank whose deposits are insured by the Federal Deposit Insurance Corporation to the credit of the board. In the event any sums in excess of the amount of the insurance shall be deposited therein, the board shall require of the bank ample security for same, either in the form of United States Bonds of an amount equal to the excess or by a bond in like amount executed by some surety company authorized to do business in the State of Arkansas.

(b) The secretary and treasurer of the board shall give bond in some surety company authorized to do business in the State of Arkansas in an amount double the amount of any funds in his hands, and the bond shall be subject to the approval of all the members of the board. Before accepting the bonds herein mentioned, the chairman of the board shall investigate as to the solvency of the surety company issuing the bonds and its qualifications to do business in the State of Arkansas and shall file and incorporate in the minutes of the board the result of his findings with a resume of the evidence upon which such findings are based.

(c) All checks drawn upon the funds of the board shall be countersigned by the chairman. The checks shall be of the voucher form and shall state the purpose and consideration for which they are given.

History. Acts 1939, No. 95, § 22; A.S.A. 1947, § 19-4022.

Cross References. Self-insured fidelity bond programs, § 21-2-701 et seq.

14-201-325. Disposition of profits.

Any profits derived by any of the boards of public utilities created under this subchapter, after there has been set aside from the earnings a sum sufficient to pay all outstanding indebtedness of the plants or sewerage systems under the control of the board and a sum sufficient to provide for expenses, extensions, and enlargements found necessary, or which may be reasonably anticipated, shall be used by the board to retire any outstanding bonds or interest thereon issued by any of the boards of improvement of the district constructing the plants under its control. In case there are no such outstanding bonds or interest or when all of such outstanding bonds and interest thereon have been paid, such profits shall be paid to the treasurer of the city or town wherein the board is created. These funds are to be used by the board of aldermen of the city or town to defray any expense or pay any debt of the city or town.

History. Acts 1939, No. 95, § 28; A.S.A. 1947, § 19-4028.

14-201-326. Enlargements of plants and systems.

(a) The board of public utilities may, in their discretion and from time to time, make an enlargement or enlargements of the plants and systems and extensions of the lines thereof as may be necessary to serve the residents of the city or town with electric lights, electric power, water, or sewerage, whether the area to be so serviced shall be included in the improvement district or not.

(b) No additional tax shall be levied upon the property within the improvement district, but the funds for that purpose may be contributed in whole or in part by outside agencies, or by the persons to be benefited, or, in the discretion of the board, the funds may be taken from the net revenue coming into its hands.

History. Acts 1939, No. 95, § 4; A.S.A. 1947, § 19-4004.

CASE NOTES

Bonds.

The board of public utilities may enlarge the plants and systems to extend lines of service from contributions from outside agencies, from contributions of persons benefited, or by using revenue coming into their hands, but they are not authorized to issue bonds for the purpose of raising funds to pay for these enlargements. Portis v. Board of Pub. Utils., 213 Ark. 201, 209 S.W.2d 864 (1948).

14-201-327. Sale or mortgage of plants and machinery.

No board of public utilities created under the terms of this subchapter shall ever have the right to sell, mortgage, or create any lien whatsoever upon any of the plants under its jurisdiction, except that the board, from time to time, may sell and dispose of any machinery or equipment not necessary to the maintenance or operation of the plants, and, in the purchase of any equipment for the plants, the seller may retain title to or a vendor's lien upon the property purchased from him by the board.

History. Acts 1939, No. 95, § 29; A.S.A. 1947, § 19-4029.

14-201-328. Accounting books — Annual audit.

(a) The board shall keep or cause to be kept separate books of account of each light plant, water plant, or sewerage system under its control and operation and for that purpose may employ such clerical help, bookkeepers, and accountants as may be necessary.

(b) The books of accounts shall be audited annually by a certified public accountant, licensed and engaged in the practice of accountancy in the State of Arkansas, who shall make a detailed report of his audit and file one (1) copy with the secretary of the board and one (1) copy with the city clerk or recorder of the city or town wherein the board shall be. The expenses of such audits shall be paid by the boards of

public utilities from the funds derived by them from the operation of the plants or sewerage systems.

History. Acts 1939, No. 95, § 27, A.S.A. 1947, § 19-4027.

14-201-329. Suits for misappropriation or misuse of money.

Any taxpayer in any city or town in this state where this subchapter shall be adopted shall have the right to institute a suit against the board of public utilities or any member thereof for any sums of money or any property that may be misappropriated or misused by the board or any member thereof.

History. Acts 1939, No. 95, § 30; A.S.A. 1947, § 19-4030.

14-201-330. Power to sue and be sued — Hiring of attorneys.

(a) The board of public utilities may collect and receipt for and sue in its own name to recover any money, property, or right belonging to any of the utilities coming under its jurisdiction and may be sued.

(b) When any actions shall be brought by or against the board or when, in its opinion, legal advice or services are necessary, it may employ and compensate from the funds in its hands any attorneys it may deem advisable to employ.

History. Acts 1939, No. 95, § 31; A.S.A. 1947, § 19-4031.

CHAPTER 202

JOINT MUNICIPAL ELECTRIC POWER GENERATION

SECTION.
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Cross References. Financing of electric facilities by municipalities and improvement districts, §§ 14-200-109, 14-216-101.

Local Government Bond Act of 1985, § 14-164-301 et seq.

Municipal electric system financing, § 14-203-101 et seq.

Effective Dates. Acts 1979, No. 5, § 20: Jan. 23, 1979. Emergency clause provided: "It is hereby found and declared that adequate, reliable and economical supplies of electric power and energy are essential to the continued health, welfare, economic growth and development of the people of the State of Arkansas who can be served by Projects completed under the provisions of this Act and that the availability of the authorities and powers granted by this Act is immediately necessary for the protection and preservation of the health, safety and welfare of the people. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in force and effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1993, Nos. 543 and 611, § 5: Mar. 16, 1993 and Mar. 22, 1993, respectively. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing law prescribing the requirements for the execution of joint municipal electric power generation revenue bonds by municipalities is unduly restrictive; that a provision broadening such law to allow for execution wholly by means of facsimile signatures is desirable in order to provide needed flexibility to municipalities; that there is an emergency need for such a provision and that an enactment of the measure will remedy this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Ark. L. Rev. Comment, Municipal Bonds and Amendment 62: Clearing Up a Serbonian Bog, 39 Ark. L. Rev. 499.

C.J.S. 20 C.J.S., Electr., § 8.

14-202-101. Title.

This chapter may be referred to and cited as the "Joint Municipal Electric Power Generation Act."

History. Acts 1979, No. 5, § 1; A.S.A. 1947, § 19-5601.

14-202-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Bonds" means bonds and any series of bonds authorized by and issued pursuant to the provisions of this chapter;

(2) "Clerk" means city clerk, city recorder, town recorder, or other similar office hereafter created or established;

(3) "Costs" or "project costs" means, but shall not be limited to:

(A) All costs of acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any project including the costs of studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto;

(B) All costs of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing the same;

(C) Administrative, organizational, legal, engineering, and inspection expenses;

(D) Financing fees, expenses, and costs;

(E) Working capital;

(F) Initial and reload fuel costs;

(G) All machinery and equipment including construction equipment;

(H) Interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the issuing municipality;

(I) Establishment of reserves; and

(J) All other expenditures of the issuing municipality incidental, necessary, or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any project and the placing of the project in operation;

(4) "Electric system" means any system for the generation, transmission, or distribution of electric power or energy;

(5) "Governing body" means the council, board of directors, commission, or other governing body of a municipality;

(6) "Interest" or "interest in a project" means any ownership interest in a project including, without limitation, an undivided interest as a tenant in common;

(7) "Major utility facility" means any electric generating plant and related necessary and appurtenant land rights, substation, fuel, fuel handling, processing and storage equipment, water supply facilities, and similar necessary equipment and property, whether real, personal, or mixed;

(8) "Municipality" means any city of the first class which owns an electric system whether operated by it or by a person under a franchise, lease, or other agreement or arrangement between the municipality and the person;

(9) "Person" means any natural person, firm, corporation, electric cooperative corporation, nonprofit corporation, association, or improvement district;

(10) "Project" means any major utility facility owned in whole or in part by one (1) or more public utilities, whether the major utility facility is located entirely or partly within, or wholly without, a municipality;

(11) "Public utility" means any person engaged in generation and sale of electric power and energy and subject to regulation by the Arkansas Public Service Commission;

(12) "State" means the State of Arkansas.

History. Acts 1979, No. 5, § 2; A.S.A. 1947, § 19-5602.

14-202-103. Authorization to construct and operate project.

(a)(1) A municipality is authorized and empowered to acquire, construct, reconstruct, enlarge, equip, operate, and maintain an interest in a project, jointly with one (1) or more municipalities or persons and with one (1) or more public utilities, and is authorized and empowered to enter into agreements for the joint or cooperative ownership, financing, construction, or operation and maintenance of any project, and to enter into agreements for the exchange and to exchange with other municipalities, persons, or public utilities of an interest in one (1) or more portions of a project for an interest in one (1) or more other portions of the project.

(2) In particular, but without limiting the generality of the foregoing, any municipality may participate in the financing of any project owned or to be owned by the other party or parties to the agreement, in exchange for the ownership of a portion thereof, for the use of the project or for an agreed upon portion of the power and energy output thereof.

(3) Any agreement may provide for the creation of a joint board or committee for administration of the undertaking covered by the agreement or for the delegation of authority to administer an undertaking to one (1) or more parties to the agreement and may contain such other terms and conditions as the parties consider appropriate.

(b) Prior to exercising any such authority or power, the governing body of the municipality shall determine the needs of the municipality for power and energy for the present and a reasonable period in the future as shall be determined by the governing body of the municipality. In determining the power requirements of a municipality, for the present and a reasonable period in the future, there shall be taken into account the following:

(1) The economies and efficiencies estimated to be achieved in acquiring, constructing, and operating the proposed project;

(2) The municipality's estimated requirements for power and energy from the project and for reserve capacity and to meet obligations under pooling and reserve sharing agreements reasonably related to its needs for power and energy to which it is or is anticipated to become a party; and

(3) The cost of existing or alternative power supply sources.

(c) Any municipality is authorized to make, or cause to be made, and pay for engineering and other studies as it may deem necessary or desirable.

(d) A municipality shall not undertake the acquisition, construction, enlarging, or equipping of an interest in the project which will result in a municipality obtaining electric power capacity in excess of the power requirements of the municipality for the present and a reasonable time in the future.

History. Acts 1979, No. 5, § 3; A.S.A. 1947, § 19-5603.

14-202-104. Contracts to acquire interest in project.

(a) The acquisition of an interest in a project shall include the purchase or lease by mutual voluntary agreement with another person of an existing project or an interest therein or the participation in the planning, engineering, and legal aspects of preparing for the construction of and securing necessary state, local, or federal permits for the construction of a proposed project or a project on which construction has been begun but not completed.

(b) Any contract entered into by a municipality with respect to an interest in, and operation of, a project shall be authorized by ordinance of the governing body of the municipality and shall contain such terms, conditions, and provisions, as the governing body of the municipality shall determine to be necessary or desirable. Any contract may include, but shall not be limited to, the following:

(1) The purpose or purposes of the contract;

(2) The duration of the contract;

(3) The manner of appointing or employing the personnel necessary in connection with the project;

(4) The method of financing the project including the apportionment of costs and revenues;

(5) Provisions specifying the ownership interests of the parties in real property, or portions thereof, used or useful in connection with the project, and the procedures for the disposition of such property when the contract expires, is terminated, or when the project, for any reason, is abandoned, decommissioned, or dismantled;

(6) Provisions relating to alienation and partition of a municipality's undivided interest in a project;

(7) Provisions permitting or requiring the exchange by the municipality with other municipalities, persons, or public utilities of an interest in one (1) or more portions of a project for an interest in one (1) or more other portions of the project and specifying the procedure therefor;

(8) Appropriate provisions pertaining to the details of accomplishing the acquisition, whereby one (1) of the parties to the contract, including a public utility, may construct the project as agent for all the parties;

(9) Provisions for the operation and maintenance of a project, which may authorize one (1) of the parties to the contract, including a private person, to operate and maintain the project as agent for all the parties;

(10) Provisions that, if one (1) or more of the parties shall default in the performance or discharge of its or their obligations with respect to the project, one (1) or more of the other parties may assume, pro rata, or otherwise, the obligations of such defaulting party or parties and may succeed to such rights and interests of the defaulting parties in the project as may be agreed upon in the contract;

(11) Methods of amending the contract;

(12) Methods for terminating the contract; and

(13) Any other necessary or proper matter.

(c) It shall not be necessary for the municipality to publish any such contract if the ordinance authorizing the contract is published as required by law governing the publication of ordinances of a municipality, the ordinance advises that a copy of the contract is on file in the office of the clerk of the municipality for inspection by any interested person, and the copy of the contract is filed with the clerk of the municipality.

History. Acts 1979, No. 5, § 4, A.S.A. 1947, § 19-5604.

14-202-105. Sale of excess capacity.

(a) Capacity or output derived by a municipality from a project not then required by the municipality may be sold or exchanged by the municipality, for such consideration, for such period, and upon such other terms and conditions as may be determined by the parties to any other municipality, improvement district, federal or state political subdivision or agency, or other person, which other municipality, improvement district, federal or state political subdivision or agency, or other person owns an electric system or electric system facilities whether operated by it, or by a person under a franchise, lease, or other agreement.

(b) Such sales of excess capacity of a project shall not be made if such sales would cause the interest on bonds issued under this chapter to finance a project to cease to be exempt from federal income taxes.

History. Acts 1979, No. 5, § 5; A.S.A. 1947, § 19-5605.

14-202-106. Acquisition of licenses and permits.

(a) Municipalities proceeding under this chapter are authorized to apply to the appropriate agencies of the state, the United States or any state thereof, and to any other proper agency for such licenses, permits, certificates, or approvals as may be necessary, and to obtain, hold and use such licenses, permits, certificates, and approvals.

(b) Nothing in this chapter shall be construed to require a municipality to obtain any license, certificate, permit, or approval from the Arkansas Public Service Commission not otherwise required by other laws of the State of Arkansas.

History. Acts 1979, No. 5, § 6; A.S.A. 1947, § 19-5606.

14-202-107. Contracts to exchange and transmit electric power.

Municipalities are authorized to enter into contracts for the exchange, interchange, wheeling, pooling, and transmission of electric power and energy produced by a project with any other municipality, improvement district, federal or state political subdivision or agency, or other person which owns an electric system, or electric system facilities, whether operated by it or by a person under a franchise, lease, or other agreement.

History. Acts 1979, No. 5, § 7; A.S.A. 1947, § 19-5607

14-202-108. Bonds — Issuance generally.

(a) Municipalities are authorized to use any available funds and revenues to pay and provide for costs and expenses of accomplishing the purposes authorized by this chapter and, for the purpose of paying project costs or the portion thereof pertaining to its interest in the project, a municipality may issue revenue bonds as provided in this chapter.

(b) The issuance of bonds shall be by an ordinance of the governing body of the municipality.

History. Acts 1979, No. 5, § 8; 1981, No. 425, § 45; A.S.A. 1947, § 19-5608.

14-202-109. Bonds — Terms and conditions.

(a) As the ordinance may provide, the bonds may:

(1) Be coupon bonds payable to bearer, subject to registration as to principal or as to principal and interest, or fully registered bonds without coupons;

(2) Contain exchange privileges;

(3) Be issued in one (1) or more series;

(4) Bear such date or dates;

(5) Mature at such time or times;

(6) Bear interest at such rate or rates;

(7) Be in such form;

(8) Be executed in such manner;

(9) Be payable in such medium of payment, at such place or places;

(10) Be subject to such terms of redemption in advance of maturity at such prices; and

(11) Contain such terms, covenants, and conditions including without limitation, those pertaining to:

(A) The custody and application of the proceeds of the bonds;

(B) The collection and disposition of revenues;

(C) The maintenance of various funds and reserves;

(D) The investing and reinvesting of any moneys during periods not needed for authorized purposes;

(E) The nature and extent of the security;

(F) The rights, duties, and obligations of the municipality and the trustee for the holders or registered owners of the bonds; and

(G) The rights of the holders or registered owners of the bonds.

(b) The bonds shall have all the qualities of negotiable instruments under the laws of this state, subject to the provisions for registration set forth herein.

History. Acts 1979, No. 5, § 8; 1981, No. 425, § 45; A.S.A. 1947, § 19-5608.

14-202-110. Bonds — Trust indenture.

(a) The ordinance may provide for the execution of a trust indenture by the municipality with a bank or trust company within or without the state.

(b) The trust indenture may control the priority between successive issues and may contain any other terms, covenants, and conditions that are deemed desirable by the governing body including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the maintenance of various funds and reserves, the investing and reinvesting of any moneys during periods not needed for authorized purposes, the nature and extent of the security, the rights, duties, and obligations of the municipality and the trustee for the holders or registered owners of the bonds, and the rights of the holders or registered owners of the bonds.

(c) It shall not be necessary for the municipality to publish any trust indenture, or any security agreement or other instrument, if the ordinance authorizing the trust indenture or security agreement or other instrument is published as required by the law governing the publication of ordinances of a municipality, and the ordinance advises that a copy of the trust indenture or security agreement or other instrument, as the case may be, is on file in the office of the clerk of the municipality for inspection by any interested person, and the copy of the trust indenture or security agreement or other instrument, as the case may be, is filed with the clerk of the municipality.

History. Acts 1979, No. 5, § 8; 1981, No. 425, § 45; A.S.A. 1947, § 19-5608.

14-202-111. Bonds — Sale.

The bonds may be sold at public or private sale for whatever price including, without limitation, sale at a discount, and in whatever manner as the municipality may determine by ordinance.

History. Acts 1979, No. 5, § 8; 1981, No. 425, § 45; A.S.A. 1947, § 19-5608.

14-202-112. Bonds, coupons — Execution and seal.

(a)(1)(A) Bonds issued hereunder shall be executed by the manual or facsimile signatures of the mayor and clerk of the municipality.

(B) The coupons attached to the bonds may be executed by the facsimile signature of the mayor of the municipality.

(2) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of the bonds or coupons, their signatures shall, nevertheless, be valid and sufficient for all purposes.

(b) The seal of the municipality shall be placed or printed on each bond in such manner as the governing body of the municipality shall determine.

History. Acts 1979, No. 5, § 8; 1981, No. 425, § 45; A.S.A. 1947, § 19-5608; Acts 1993, No. 543, § 1; 1993, No. 611, § 1.

Amendments. The 1993 amendment by identical acts Nos. 543 and 611 deleted "provided that one of the signatures must be manual" at the end of (a)(1)(A).

14-202-113. Bonds — Priority among issues.

Priority between and among successive issues may be controlled by the ordinance.

History. Acts 1979, No. 5, § 8; 1981, No. 425, § 45; A.S.A. 1947, § 19-5608.

14-202-114. Bonds — Mortgage lien.

(a) The ordinance or trust indenture authorizing or securing any bonds issued hereunder may impose a foreclosable mortgage lien upon the interest of the municipality in the project financed in whole or in part with the proceeds of the bonds or upon all or any part of the electric system of the municipality.

(b) The nature and extent of the mortgage lien may be controlled by the ordinance or trust indenture, including, without limitation, provisions pertaining to the release of all or part of the project properties or the electric system, as the case may be, from the mortgage lien and the priority of the mortgage lien in the event of the issuance of additional bonds.

(c) Subject to whatever terms, conditions, and restrictions may be contained in the ordinance or trust indenture, any holder or registered owner of bonds issued under this chapter, or of any coupon attached

thereto, may, either at law or in equity, enforce the mortgage lien and may, by proper suit, compel the performance of the duties of the officials of the municipality set forth in the ordinance or trust indenture authorizing or securing the bonds.

History. Acts 1979, No. 5, § 8; 1981, No. 425, § 45; A.S.A. 1947, § 19-5608.

14-202-115. Bonds — Default — Receiver.

(a) In the event of a default in the payment of the principal of, premium, if any, or interest on any bonds issued under this chapter, any court having jurisdiction may appoint a receiver to take charge of all or any part of the electric system of the municipality.

(b) The receiver shall have the power to operate and maintain the electric system and to charge and collect rates, fees, and charges sufficient to provide for the payment of the principal of, premium, if any, and interest on the bonds, after providing for the payment of any costs of receivership and operating expenses of the electric system, and to apply the revenues derived from the electric system in conformity with this chapter and the ordinance or trust indenture authorizing or securing the bonds.

(c) When the default has been cured, the receivership shall be ended and the electric system returned to the municipality.

(d) The authority of a receiver hereunder to take charge of, operate, or maintain any part of the electric system represented by an undivided interest in a project, shall be subject to the provisions of any and all contracts with others relative to the ownership, operation, and maintenance of the project and the receiver shall assume only the rights and obligations of the municipality therein.

(e) The relief afforded by this section shall be construed to be in addition and supplemental to the remedies that may be afforded the trustee for the bondholders and the bondholders in the ordinance or trust indenture authorizing or securing the bonds and shall be granted and administered so as to accord full recognition to priority rights of bondholders as the pledge of revenues from, and the mortgage lien on, the electric system as specified in and fixed by the ordinances or trust indentures authorizing or securing successive bond issues.

History. Acts 1979, No. 5, § 8; 1981, No. 425, § 45; A.S.A. 1947, § 19-5608.

14-202-116. Bonds — Nature of indebtedness.

(a) The bonds and coupons issued under this chapter shall not be general obligations of the municipality, but shall be special obligations payable from and secured by a pledge of revenues derived from the municipality's electric system and otherwise secured as provided in this chapter.

(b) In no event shall the bonds and coupons constitute an indebtedness of the municipality within the meaning of any constitutional or statutory limitation.

(c) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this chapter and that it does not constitute an indebtedness of the municipality within any constitutional or statutory limitation.

History. Acts 1979, No. 5, § 9; A.S.A. 1947, § 19-5609.

14-202-117. Refunding bonds.

(a) Bonds may be issued for the purpose of refunding any bonds issued under this chapter. Refunding bonds may be combined with bonds issued under the provisions of §§ 14-202-108 — 14-202-115 into a single issue.

(b) When refunding bonds are issued, they may either be sold or delivered in exchange for the bonds being refunded. If sold, the proceeds may be either applied to the payment of the bonds being refunded or deposited in escrow for the retirement thereof.

(c) All refunding bonds shall in all respects be issued and secured in the manner provided for other bonds issued under this chapter and shall have all the attributes of those bonds.

(d) The ordinance under which the refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on and security interest in electric system revenues and the electric system as was enjoyed by the bonds refunded thereby.

History. Acts 1979, No. 5, § 10; A.S.A. 1947, § 19-5610.

14-202-118. Rates, fees, and charges — Disposition — Pledges.

(a)(1) A municipality is authorized to fix, charge, and collect rates, fees, and charges for electric power and energy from its electric system.

(2) For so long as any bonds are outstanding and unpaid, the rates, fees, and charges shall be fixed so as to provide revenues sufficient to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its electric system, including its interest in any project, and all necessary repairs, replacements, or renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds, including bonds subsequently issued for additional projects or other additions, improvements, and betterments to its electric system, payable from the revenues, to create and maintain reserves as may be required by any ordinance or trust indenture authorizing or securing bonds, and to pay any and all amounts which the municipality may be obligated to pay from electric system revenues by law or contract.

(b) Any pledge made by a municipality pursuant to this chapter shall be valid and binding from the date the pledge is made. The revenues so pledged and then held or thereafter received by the municipality or any fiduciary on its behalf shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act. The lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the municipality without regard to whether the parties have notice thereof. The ordinance, trust indenture, or other instrument by which a pledge is created need not be filed or recorded in any manner.

History. Acts 1979, No. 5, § 11; A.S.A. 1947, § 19-5611.

14-202-119. Enforcement of rights under ordinance or trust indenture.

Any holder or registered owner of bonds or coupons appertaining thereto, except to the extent the rights given under this chapter may be restricted by the ordinance or trust indenture authorizing or securing the bonds and coupons, may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of this state or granted as provided in this chapter, or, to the extent permitted by law, under such ordinance or trust indenture authorizing or securing the bonds or under any agreement or other contract executed by the municipality pursuant to this chapter. The holder or owner may enforce and compel the performance of all duties required by this chapter or by the ordinance or trust indenture to be performed by any municipality or by any officer thereof, including the fixing, charging, and collecting of rates, fees, and charges.

History. Acts 1979, No. 5, § 12; A.S.A. 1947, § 19-5612.

14-202-120. Bonds and projects — Tax exemption.

(a) Bonds issued under the provisions of this chapter, and the interest thereon, shall be exempt from all state, county, and municipal taxes, including property, income, inheritance, and estate taxes.

(b) Any interest in a project of a municipality shall be exempt from all state, county, and municipal taxes, including property, income, inheritance, and estate taxes.

History. Acts 1979, No. 5, §§ 13, 14; A.S.A. 1947, §§ 19-5613, 19-5614.

14-202-121. Investment of public funds in bonds.

Any municipality, or any board, commission, or other authority duly established by ordinance of any municipality, or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any municipality, or the board of trustees of any retirement system created by the General Assembly may, in its discretion, invest any of its funds in bonds issued under the provisions of this chapter, and bonds issued under the provisions of this chapter shall be eligible to secure the deposit of public funds.

History. Acts 1979, No. 5, § 15; A.S.A. 1947, § 19-5615.

14-202-122. Contracts for grants-in-aid and loans.

The governing body of any municipality is authorized to make application and to enter into contracts for and to accept grants-in-aid and loans from the United States and the State of Arkansas, and their agencies, for planning, acquiring, constructing, expanding, maintaining, and operating any project or electric system or participating in any research or development program, or performing any function which the municipality may be authorized by law to provide or perform.

History. Acts 1979, No. 5, § 16; A.S.A. 1947, § 19-5616.

14-202-123. Exemption of projects from other laws.

Participation by a municipality in the acquisition, construction, reconstruction, enlargement, equipment, or operation and maintenance of projects under the provisions of this chapter need not comply with the requirements of any other law applicable to the acquisition, construction, reconstruction, enlargement, equipment, or operation and maintenance of public works or facilities, including, without limitation, laws pertaining to public bidding, paying prevailing wages, transfer or exchange of title to real or personal property, or any other aspect of the acquiring, constructing, reconstructing, enlarging, equipping, or operation or maintenance of public works or public projects, or transfer or exchange of title to real or personal property, none of which laws shall be applicable to projects under this chapter.

History. Acts 1979, No. 5, § 17; A.S.A. 1947, § 19-5617.

CHAPTER 203

MUNICIPAL ELECTRIC SYSTEM FINANCING

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Cross References. Financing of electric facilities by municipalities and improvement districts, §§ 14-200-109, 14-216-101.

Joint municipal electric power generation, § 14-202-101 et seq.

Local Government Bond Act of 1985, § 14-164-301 et seq.

Municipalities and counties hydroelectric power development, § 14-204-101 et seq.

Operation of municipal electric light plant and system, § 14-201-101 et seq.

Effective Dates. Acts 1983, No. 441, § 13: Mar. 13, 1983. Emergency clause provided: "It is hereby found and declared that adequate, reliable and economical supplies of electric power and energy are essential to the continued health, welfare, economic growth and development of the people of the State of Arkansas who can be served by Electric Systems financed under the provisions of this Act and that the availability of the authorities and powers granted by this Act is immediately necessary for the protection and preservation of the health, safety and welfare of the people. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in force and effect from and after its passage and approval."

Acts 1987, No. 479, § 4: Mar. 31, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that adequate, reliable and economical supplies of electric power and energy are essential to the continued health, welfare, safety, economic growth and development of the State of Arkansas and its people and that the availability of the authorities and powers granted by this act is immediately necessary for the accomplishment and realization of such public benefits. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 735, § 3: Apr. 7, 1987 Emergency clause provided: "It is hereby found and declared that adequate, reliable and economic supplies of electric power and energy are essential to the continued health, welfare, economic growth and development of the people of the State of Arkansas who can be served by Electric Systems financed under the provisions of this Act and that the authority of municipalities to fix electric rates so as to provide sufficient revenue to secure payments under a contract for the purchase of electric power and energy is immediately necessary for the protection and preservation of the health, safety and welfare of the people. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health, and safety, shall be in force and effect from and after its passage and approval."

RESEARCH REFERENCES

C.J.S. 87 C.J.S., Towns, § 161.

14-203-101. Title.

This chapter may be referred to and cited as the "Municipal Electric System Financing Act."

History. Acts 1983, No. 441, § 1; A.S.A. 1947, § 19-6001.

14-203-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Bonds" means bonds and any series of bonds authorized by and issued pursuant to the provisions of this chapter;

(2) "Clerk" means city clerk, city recorder, town recorder, or other similar office hereafter created or established;

(3) "Costs" means, but shall not be limited to:

(A) All costs of acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any electric system, including the costs of studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto;

(B) All costs of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing them;

(C) Administrative, organizational, legal, engineering, and inspection expenses;

(D) Financing fees, expenses, and costs;

(E) Working capital;

(F) Initial and reload fuel costs;

(G) Contracts for the purchase of electric power and energy from others;

(H) All machinery and equipment including construction equipment;

(I) Interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the issuing municipality;

(J) Establishment of reserves; and

(K) All other expenditures of the issuing municipality incidental, necessary, or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any electric system;

(4) "Electric system" means any system for the generation, transmission, or distribution of electric power or energy;

(5) "Governing body" means the council, board of directors, commission, or other governing body of a municipality;

(6) "Municipality" means any city of the first class which owns an electric system whether operated by it or by a person under a franchise, lease, or other agreement or arrangement between the municipality and such person;

(7) "Person" means any natural person, firm, corporation, electric cooperative corporation, nonprofit corporation, association, or improvement district; and

(8) "State" means the State of Arkansas.

History. Acts 1983, No. 441, § 2; A.S.A. 1947, § 19-6002.

14-203-103. Scope of chapter.

(a) Nothing in this chapter shall be construed as modifying or diminishing the present authority of municipalities respecting the ownership and operation of their electric systems including, without limitation, the authority contained in §§ 14-202-101 — 14-202-123 and §§ 14-204-101 — 14-204-112.

(b) Nothing in this chapter shall be construed to authorize any municipality to issue or sell bonds under the provisions of this chapter or to use the proceeds thereof to purchase, condemn, or otherwise acquire a utility plant or distribution system or portion thereof owned or operated by a regulated public utility without the consent of such public utility.

History. Acts 1983, No. 441, §§ 10, 11; A.S.A. 1947, §§ 19-6010, 19-6011.

14-203-104. Authorization to finance electric system.

Municipalities are authorized to use any available funds and reserves to pay and provide for costs and expenses of owning and operating an electric system and, for the purpose of paying electric system costs, a municipality may issue revenue bonds as provided in this chapter.

History. Acts 1983, No. 441, § 3; A.S.A. 1947, § 19-6003.

14-203-105. Bonds — Issuance generally.

The issuance of bonds shall be by an ordinance of the governing body of the municipality.

History. Acts 1983, No. 441, § 3; A.S.A. 1947, § 19-6003.

14-203-106. Bonds — Terms and conditions.

(a) As the ordinance may provide, the bonds may:

(1) Be coupon bonds payable to bearer, subject to registration as to principal or as to principal and interest, or fully registered bonds without coupons;

(2) Contain exchange privileges, and be issued in one (1) or more series;

(3) Bear such date or dates;

(4) Mature at such time or times;
(5) Bear interest at such rate or rates;
(6) Be in such form;
(7) Be executed in such manner;
(8) Be payable in such medium of payment, at such place or places;
(9) Be subject to such terms of redemption in advance of maturity at whatever prices; and
(10) Contain such terms, covenants, and conditions; including without limitation, those pertaining to:
(A) The custody and application of the proceeds of the bonds;
(B) The collection and disposition of revenues;
(C) The maintenance of various funds and reserves;
(D) The investing and reinvesting of any moneys during periods not needed for authorized purposes;
(E) The nature and extent of the security;
(F) The rights, duties, and obligations of the municipality and the trustee for the holders or registered owners of the bonds; and
(G) the rights of the holders or registered owners of the bonds.
(b) The bonds shall have all the qualities of negotiable instruments under the laws of this state, subject to the provisions for registration set forth herein.

History. Acts 1983, No. 441, § 3; A.S.A. 1947, § 19-6003.

14-203-107. Bonds — Trust indenture.

(a) The ordinance may provide for the execution of a trust indenture by the municipality with a bank or trust company within or without the state.
(b) The trust indenture may control the priority between successive issues and may contain any other terms, covenants, and conditions that are deemed desirable by the governing body including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the maintenance of various funds and reserves, the investing and reinvesting of any moneys during periods not needed for authorized purposes, the nature and extent of the security, the rights, duties, and obligations of the municipality and the trustee for the holders or registered owners of the bonds, and the rights of the holders or registered owners of the bonds.
(c) It shall not be necessary for the municipality to publish any trust indenture, or any security agreement or other instrument, if the ordinance authorizing the trust indenture or security agreement or other instrument is published as required by the law governing the publication of ordinances of a municipality. The ordinance advises that a copy of the trust indenture or security agreement or other instrument, as the case may be, is on file in the office of the clerk of the municipality for inspection by an interested person, and the copy of the trust indenture or security agreement or other instrument, as the case may be, is filed with the clerk of the municipality.

History. Acts 1983, No. 441, § 3; A.S.A. 1947, § 19-6003.

14-203-108. Bonds — Sale.

The bonds may be sold at public or private sale, for whatever price, including, without limitation, sale at a discount, and in whatever manner that the municipality may determine by ordinance.

History. Acts 1983, No. 441, § 3; A.S.A. 1947, § 19-6003.

14-203-109. Bonds, coupons — Execution — Seal.

(a)(1)(A) Bonds issued under this chapter shall be executed by the manual or facsimile signatures of the mayor and clerk of the municipality.

(B) The coupons attached to the bonds may be executed by the facsimile signature of the mayor of the municipality.

(2) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of the bonds or coupons, their signatures shall, nevertheless, be valid and sufficient for all purposes.

(b) The seal of the municipality shall be placed or printed on each bond in such manner as the governing body of the municipality shall determine.

History. Acts 1983, No. 441, § 3; A.S.A. 1947, § 19-6003.

14-203-110. Bonds — Priority among issues.

Priority between successive issues may be controlled by the ordinance.

History. Acts 1983, No. 441, § 3; A.S.A. 1947, § 19-6003.

14-203-111. Bonds — Nature of indebtedness — Surplus revenues.

(a) The bonds and coupons issued under this chapter shall not be general obligations of the municipality, but shall be special obligations payable from and secured by a pledge of revenues derived from the municipality's electric system and otherwise secured as provided in this chapter. In no event shall the bonds and coupons constitute an indebtedness of the municipality within the meaning of any constitutional or statutory limitation.

(b) It shall be plainly stated on the face of each bond that the bond has been issued under the provisions of this chapter and that it does not constitute an indebtedness of the municipality within any constitutional or statutory limitation.

(c)(1) In addition, the municipality is authorized to pledge to and use for the payment of the principal of and interest on the bonds, together with other expenses in connection with the bonds, surplus revenues derived from water, sewer, and gas utilities owned by the municipality.

(2) "Surplus revenues", as used in this subsection, is defined to mean revenues remaining after adequate provision shall have been made for expenses of operation, maintenance, and depreciation and all requirements of ordinances, orders, and indentures securing bonds theretofore or thereafter issued to finance the cost of acquiring, constructing, reconstructing, extending, or improving the utilities have been fully met and complied with.

History. Acts 1983, No. 441, § 4; A.S.A. 1947, § 19-6004; Acts 1987, No. 479, § 1.

14-203-112. Refunding bonds.

(a)(1) Bonds may be issued for the purpose of refunding any bonds issued under this chapter. Any bonds issued under other applicable legislation payable from and secured by, in whole or in part, a pledge of revenues derived from the municipality's electric system.

(2) The refunding bonds may be combined with bonds issued under the provisions of §§ 14-203-104, 14-203-110, 14-203-113, and 14-203-114 into a single issue.

(b) When refunding bonds are issued, such bonds may either be sold or delivered in exchange for the bonds being refunded. If sold, the proceeds may be either applied to the payment of the bonds being refunded or deposited in escrow for the retirement thereof.

(c) All refunding bonds shall in all respects be issued and secured in the manner provided for other bonds issued under this chapter and shall have all the attributes of such bonds.

(d) The ordinance or trust indenture under which such refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on and security interest in electric system revenues and the electric system as was enjoyed by the bonds refunded thereby.

History. Acts 1983, No. 441, § 5; A.S.A. 1947, § 19-6005; Acts 1987, No. 479, § 2.

14-203-113. Bonds — Mortgage lien.

(a) The ordinance or trust indenture authorizing or securing any bonds issued under this chapter may impose a foreclosable mortgage lien upon all or any part of the electric system of the municipality.

(b) The nature and extent of the mortgage lien may be controlled by the ordinance or trust indenture including, without limitation, provisions pertaining to the release of all or part of the electric system from

the mortgage lien and the priority of the mortgage lien in the event of the issuance of additional bonds.

(c) Subject to such terms, conditions, and restrictions as may be contained in the ordinance or trust indenture, any holder or registered owner of bonds issued under this chapter, or of any coupon attached thereto, may, either at law or in equity, enforce the mortgage lien and may, by proper suit, compel the performance of the duties of the officials of the municipality set forth in the ordinance or trust indenture authorizing or securing the bonds.

History. Acts 1983, No. 441, § 3;
A.S.A. 1947, § 19-6003.

14-203-114. Bonds — Default — Receiver.

(a) In the event of a default in the payment of the principal of, premium, if any, or interest on any bonds issued under this chapter, any court having jurisdiction may appoint a receiver to take charge of all or any part of the electric system of the municipality.

(b) The receiver shall have the power to operate and maintain the electric system and to charge and collect rates, fees, and charges sufficient to provide for the payment of the principal of, premium, if any, and interest on the bonds, after providing for the payment of any costs of receivership and operating expenses of the electric system, and to apply the revenues derived from the electric system in conformity with this chapter and the ordinance or trust indenture authorizing or securing the bonds.

(c) When the default has been cured, the receivership shall be ended and the electric system shall be returned to the municipality.

(d) The relief afforded by this section shall be construed to be in addition and supplemental to the remedies that may be afforded the trustee for the bondholders and the bondholders in the ordinance or trust indenture authorizing or securing the bonds and shall be so granted and administered as to accord full recognition to priority rights of bondholders as the pledge of revenues from, and the mortgage lien on, the electric system as specified in and fixed by the ordinances or trust indentures authorizing or securing successive bond issues.

History. Acts 1983, No. 441, § 3;
A.S.A. 1947, § 19-6003.

14-203-115. Rates, fees, and charges — Disposition — Pledges.

(a) For so long as any bonds are outstanding and unpaid, the rates, fees, and charges for electric power and energy charged and collected by a municipality shall be so fixed as to provide revenues sufficient to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its electric system, and all necessary repairs, replacements, or renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds, including bonds

subsequently issued for additions, improvements, and betterments to its electric system, payable from such revenues, to create and maintain reserves as may be required by any ordinance or trust indenture authorizing or securing bonds, and to pay any and all amounts which the municipality may be obligated to pay from electric system revenues by law or contract.

(b) For so long as any contract for the purchase of electric power and energy is in effect, the rates, fees, and charges for electric power and energy charged and collected by a municipality may be fixed to provide sufficient revenues to secure payments of amounts due under the contract and to comply with the terms of the contract. Any contract shall be approved by ordinance of the governing body of the purchasing municipality, and the ordinance shall be published one (1) time in a newspaper of general circulation in the municipality. Any contest of the ordinance shall be barred at the end of thirty (30) days after the ordinance is published.

(c) Any pledge made by a municipality pursuant to this chapter shall be valid and binding from the date the pledge is made. The revenues so pledged and then held or thereafter received by the municipality or any fiduciary on its behalf shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the municipality without regard to whether the parties have notice thereof.

(d) The ordinance, trust indenture, or other instrument by which a pledge is created need not be filed or recorded in any manner.

History. Acts 1983, No. 441, § 6; A.S.A. 1947, § 19-6006; Acts 1987, No. 735, § 1.

14-203-116. Rights of holder or owner of bonds.

Any holder or registered owner of bonds or coupons appertaining thereto, except to the extent the rights given in this chapter may be restricted by the ordinance or trust indenture authorizing or securing such bonds and coupons, may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the state or granted hereunder, or, to the extent permitted by law, under such ordinance or trust indenture authorizing or securing such bonds or under any agreement or other contract executed by the municipality pursuant to this chapter, and may enforce and compel the performance of all duties required by this chapter or by such ordinance or trust indenture to be performed by any municipality or by any officer thereof, including the fixing, charging, and collecting of rates, fees, and charges.

History. Acts 1983, No. 441, § 7; A.S.A. 1947, § 19-6007.

14-203-117. Bonds — Tax exemption.

Bonds issued under the provisions of this chapter, and the interest thereon, shall be exempt from all state, county, and municipal taxes, including property, income, inheritance, and estate taxes.

History. Acts 1983, No. 441, § 8; A.S.A. 1947, § 19-6008.

14-203-118. Investment of public funds in bonds.

Any municipality, or any board, commission, or other authority duly established by ordinance of any municipality, or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any municipality, or the board of trustees of any retirement system created by the General Assembly may, in its discretion, invest any of its funds in bonds issued under the provisions of this chapter. Bonds issued under the provisions of this chapter shall be eligible to secure the deposit of public funds.

History. Acts 1983, No. 441, § 9; A.S.A. 1947, § 19-6009.

CHAPTER 204

MUNICIPAL AND COUNTY HYDROELECTRIC POWER DEVELOPMENT

SECTION.
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14-204-102. Definitions.
14-204-103. Construction.
14-204-104. Authorization to own and operate hydroelectric power project — Contracts to supply energy.
14-204-105. Authorization to issue bonds.
14-204-106. Revenue bonds generally.
14-204-107. Nature of bond indebtedness — Payment from revenue of project — Use of excess revenue.
14-204-108. Refunding bonds.
14-204-109. Mortgage lien — Default — Receiver.
14-204-110. Application for licenses, permits, certificates, and approvals.
14-204-111. Bonds — Tax exemption.
14-204-112. Investment of public funds in bonds.

Cross References. Financing of electric facilities by municipalities and improvement districts, §§ 14-200-109, 14-216-101.

Local Government Bond Act of 1985, § 14-164-301 et seq.

Municipal electric system financing, § 14-203-101 et seq.

Effective Dates. Acts 1981 (Ex. Sess.), No. 17, § 15: Nov. 25, 1981. Emergency clause provided: "It has been found and it is hereby declared that a number of Arkansas municipalities and counties are located near prospective sites for hydroelectric power projects, that such projects appear to be a potential source of badly needed electrical energy and that action must be taken immediately in some instances if the potentiality of these sites is to be fully realized. Therefore, an emergency is declared and this Act, being necessary for the preservation of the public peace, health and safety, shall be in force upon its passage and approval."

RESEARCH REFERENCES

Ark. L. Rev. Comment, Municipal Bonds and Amendment 62: Clearing Up a Serbonian Bog, 39 Ark. L. Rev. 499.

14-204-101. Title.

This chapter may be referred to and may be cited as the "Municipalities and Counties Hydroelectric Power Development Revenue Bond Law."

History. Acts 1981 (Ex. Sess.), No. 17, § 1; A.S.A. 1947, § 19-5801.

14-204-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Construct" means to acquire or build, in whole or in part, in such manner and by such method, including contracting therefor, and, if the latter, by negotiation or bidding upon such terms and pursuant to such advertising as the municipality or county shall determine to be in the public interest and necessary under the circumstances existing at the time, to accomplish the purposes of and authorities set forth in this chapter;

(2) "County" means any county of this state, regardless of whether such county owns any facilities for the transmission or distribution of electrical energy;

(3) "Equip" means to install or place on or in any building or structure equipment of any and every kind, whether or not affixed including, without limiting the generality of the foregoing, building service equipment, machinery, furniture, furnishings, and personal property of every kind;

(4) "Facilities" means any real property, personal property, or mixed property of any and every kind that can be used or that will be useful as a part of or in connection with a hydroelectric power project, including, without limiting the generality of the foregoing, rights-of-way, roads, streets, pipes, pipelines, reservoirs, utilities, materials, equipment, fixtures, machinery, furniture, furnishings, instrumentalities, and other real, personal, or mixed property of every kind;

(5) "Governing body" means the council, board of directors, or city commission of any municipality;

(6) "Hydroelectric power project" or "project" means any facilities intended to be employed in the generation of electrical energy by the use of water as the source of generating power, whether standing, running, or falling, and facilities incidental or related thereto;

(7) "Lease" means to lease for such rentals, for such periods and upon such terms and conditions as the municipality or county shall determine including, without limiting the generality of the foregoing, the

granting of such renewal or extension options for such rentals, for such periods and upon such terms and conditions as the municipality or county shall determine and the granting of such purchase options for such prices and upon such terms and conditions as the municipality or county shall determine;

(8) "Loan" or "make loans" means to loan upon such terms and conditions as the municipality or county shall determine;

(9) "Mortgage lien" includes and means security interest in any personal property embodied in the facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of bonds issued under this chapter;

(10) "Municipality" means a city of the first or second class or an incorporated town, regardless of whether such municipality owns any facilities for the transmission or distribution of electrical energy;

(11) "Sell" means to sell for such price, in such manner and upon such terms as the municipality or county shall determine including, without limiting the generality of the foregoing, private or public sale, and, if public, pursuant to such advertisement as the municipality or county shall determine, sale for cash or credit payable in lump sum or in installments over such period as the municipality or county shall determine and, if on credit, with or without interest and at such rate or rates as the municipality or county shall determine; and

(12) "State" means the State of Arkansas.

History. Acts 1981 (Ex. Sess.), No. 17, §§ 7, 11; A.S.A. 1947, §§ 19-5807, 19-5811.

14-204-103. Construction.

(a) This chapter shall be liberally construed to accomplish the purposes hereof and shall be the sole act and authority necessary to be complied with.

(b) This chapter and the authority conferred by it shall be supplemental to all other authority set forth in any other act.

History. Acts 1981 (Ex. Sess.), No. 17, § 12; A.S.A. 1947, § 19-5812.

14-204-104. Authorization to own and operate hydroelectric power project — Contracts to supply energy.

(a) Any municipality and any county is authorized to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in or dispose of, or make loans to finance the acquisition, construction, reconstruction, extension, equipment, improvement of, facilities to constitute all or any part of a hydroelectric power project, as defined in § 14-204-102.

(b) Without limiting the generality of the foregoing, any municipality or county is authorized to contract with any regulated public utility for

the supplying of electrical energy produced by any such project, upon terms acceptable to such municipality or county.

History. Acts 1981 (Ex. Sess.), No. 17, § 2; A.S.A. 1947, § 19-5802.

14-204-105. Authorization to issue bonds.

(a) Municipalities and counties are authorized to use any available revenues for the accomplishment of the purposes set forth in § 14-204-104 and are authorized to issue revenue bonds and to use the proceeds thereof for the accomplishment of the purposes set forth in § 14-204-104, either alone or together with other available funds and revenues.

(b) The amount of bonds issued shall be sufficient to pay all costs of accomplishing such purposes, all costs of issuing the bonds, the amount necessary for a reserve, if desirable, the amount necessary to provide for debt service on the bonds until revenues for the payment thereof are available, and any other costs of whatever nature incidental to the accomplishment of such purposes.

History. Acts 1981 (Ex. Sess.), No. 17, § 3; A.S.A. 1947, § 19-5803.

14-204-106. Revenue bonds generally.

(a)(1) Revenue bonds authorized in this chapter may be issued by a municipality upon the adoption of an ordinance therefor by the governing body of the municipality. Revenue bonds authorized by this chapter may be issued by a county upon order of the county court of the county.

(2) The ordinance or order shall state the purpose for which the revenue bonds are to be issued and the total amount of the issue.

(3) The bonds may be in such form, may be issued in one (1) or more series, may bear such date or dates, may mature at such time or times, not exceeding thirty (30) years from their respective dates, may bear interest at such rate or rates, may be executed in such manner, may be payable in such medium of payment, at such place or places, within or without this state, may be subject to such terms of redemption, and may contain such terms, covenants, and conditions as the ordinance or order may provide including, without limitation, those pertaining to the custody and application of proceeds of the bonds, the collection and disposition of revenues, the maintenance of various funds and reserves, the investment of moneys held thereunder, the nature and extent of the security, the rights, duties, and obligations of the municipality or county and the trustee for the holders or registered owners of the bonds, and the rights of the holders or registered owners of the bonds.

(4) There may be successive bond issues for the purpose of financing the same project, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping projects already in existence, whether or not originally financed by bonds issued under this chapter, with each successive issue to be authorized as provided by this chapter.

(5) Priority between and among issues and successive issues as to security of the pledge of revenues and mortgage liens on the land, buildings, and facilities involved may be controlled by the ordinance or order authorizing the issuance of bonds hereunder.

(b) The bonds shall have all the qualities of negotiable instruments under the negotiable instruments laws of this state but may be issued in registered form or may be subject to registration as to principal or as to principal and interest.

(c)(1) The ordinance or order may provide for the execution by the municipality or county of an indenture which defines the rights of the bondholders and provides for the appointment of a trustee, within or without this state, for the bondholders.

(2) The indenture may control the priority between successive issues and may contain any other items, covenants, and conditions that are deemed desirable, including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the maintenance of various funds and reserves, the investment of moneys held thereunder, the nature and extent of the security, the rights, duties, and obligations of the municipality or county and the trustee for the holders or registered owners of the bonds, and the rights of the holders or registered owners of the bonds.

(3) It shall not be necessary for the municipality to publish any indenture, lease, or any other agreement if the ordinance authorizing an indenture, the ordinance authorizing a lease, or the ordinance authorizing any other agreement is published as required by the law governing the publication of ordinances of a municipality, and the ordinance advises that a copy of the indenture, lease, or other agreement, as the case may be, is on file in the office of the clerk or recorder of the municipality for inspection by any interested person, and the copy of the indenture, lease, or other agreement, as the case may be, is filed with the clerk or recorder of the municipality.

(d) The bonds may be sold for such price including, without limitation, sale at a discount, and in such manner as the municipality or county may determine by ordinance or order.

(e) The bonds shall be executed by the mayor and the city clerk or recorder of the municipality; or by the county judge and county clerk of the county; one (1) signature may be facsimile but one (1) must be manual. The coupons attached to the bonds may be executed by the facsimile signature of the mayor or county judge. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of the bonds or coupons, the signatures shall nevertheless be valid and sufficient for all purposes.

History. Acts 1981 (Ex. Sess.), No. 17, § 4; A.S.A. 1947, § 19-5804.

14-204-107. Nature of bond indebtedness — Payment from revenue of project — Use of excess revenue.

(a)(1) Revenue bonds shall not be general obligations of the municipality or county but shall be special obligations, and in no event shall the revenue bonds constitute an indebtedness of the municipality or county within the meaning of any constitutional or statutory limitation.

(2) It shall be plainly stated on the face of each bond that the bond has been issued under the provisions of this chapter and that it does not constitute an indebtedness of the municipality or county within any constitutional or statutory limitation.

(b) The principal of and interest on the revenue bonds, with trustee's and paying agent's fees and similar servicing charges, shall be payable from revenues derived from the hydroelectric project or projects acquired, constructed, reconstructed, extended, or improved, in whole or in part, with the proceeds of the bonds.

(c) Revenues derived from the operation of hydroelectric power projects in excess of the revenues necessary to provide for the operation, maintenance, depreciation, and debt service requirements in connection with such hydroelectric power projects, as determined by the municipality or county, may be used for any lawful municipal or county purpose and may be pledged by the municipality or county issuing revenue bonds under this chapter to the payment of principal and interest on indebtedness incurred by the municipality or county, or by a nonprofit corporation with the approval of the municipality or county, for financing the acquisition, construction, reconstruction, extension, equipment, or improvement of waterworks facilities, of sanitation and solid waste facilities, of facilities for the securing or developing of tourism, or of community recreational facilities.

History. Acts 1981 (Ex. Sess.), No. 17, § 5; A.S.A. 1947, § 19-5805.

14-204-108. Refunding bonds.

(a) Revenue bonds may be issued under this chapter for the purpose of refunding any obligations issued under this chapter. Such refunding bonds may be combined with bonds issued under the provisions of § 14-204-105 into a single issue.

(b) When bonds are issued under this section for refunding purposes, such bonds may either be sold or delivered in exchange for the outstanding obligations. If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement thereof.

(c) The ordinance or order under which such refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby.

(d) Such refunding bonds shall be issued and secured in the manner provided for other bonds issued under this chapter and shall have all the attributes of such bonds.

History. Acts 1981 (Ex. Sess.), No. 17, § 6; A.S.A. 1947, § 19-5806.

14-204-109. Mortgage lien — Default — Receiver.

(a) The ordinance, order, or indenture referred to § 14-204-106 may, but need not, impose a foreclosable mortgage lien upon the facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of bonds issued under this chapter, and the nature and extent of such mortgage lien may be controlled by the ordinance, order, or indenture including, without limitation, provisions pertaining to the release of all or part of the facilities from the mortgage lien and the priority of the mortgage lien in the event of successive bond issues as authorized by § 14-204-106.

(b) The ordinance, order, or indenture authorizing or securing the bonds may authorize any holder or registered owner of bonds issued under this chapter, or a trustee on behalf of all holders and registered owners, either at law or in equity, to enforce the mortgage lien and, by proper suit, to compel the performance of the duties of the officials of the issuing municipality or county set forth in this chapter and set forth in the ordinance, order, or indenture authorizing or securing the bonds.

(c) Subject to the provisions of the ordinance, order, or indenture referred to in § 14-204-106, in the event of a default in the payment of the principal of or interest on any revenue bonds issued under this chapter any court having jurisdiction may appoint a receiver to take charge of the facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of such bonds. The receiver shall have the power to operate and maintain the facilities and to charge and collect rates and rents sufficient to provide for the payment of the principal of and interest on the bonds, after providing for the payment of any cost of receivership and operating expenses of the facilities, and to apply the income and revenues derived from the facilities in conformity with this chapter and the ordinance or indenture authorizing or securing the bonds. When the default has been cured, the receivership shall be ended and the properties returned to the municipality or county.

(d) The relief afforded by this section shall be construed to be in addition and supplemental to the remedies that may be afforded the trustee for the bondholders and the bondholders in the ordinance, order, or indenture authorizing or securing the bonds and shall be so granted and administered as to accord full recognition to priority rights of bondholders as to the pledge of revenues from, and mortgage lien on, the facilities, as specified in and fixed by the ordinances, orders, or indentures authorizing or securing successive bond issues.

History. Acts 1981 (Ex. Sess.), No. 17, § 7; A.S.A. 1947, § 19-5807.

14-204-110. Application for licenses, permits, certificates, and approvals.

(a) Municipalities and counties proceeding under this chapter are authorized to apply to the appropriate agencies of the state, the United States or any state thereof, and to any other proper agency for such licenses, permits, certificates, or approvals as may be necessary, and to obtain, hold, and use such licenses, permits, certificates, and approvals.

(b) Nothing in this chapter shall be construed to require a municipality or county to obtain any license, certificate, permit, or approval from the Arkansas Public Service Commission not otherwise required by other laws of this state.

History. Acts 1981 (Ex. Sess.), No. 17, § 8; A.S.A. 1947, § 19-5808.

14-204-111. Bonds — Tax exemption.

Bonds issued under the provisions of this chapter shall be exempt from all state, county, and municipal taxes. This exemption includes income, property, and inheritance taxes.

History. Acts 1981 (1st Ex. Sess.), No. 17, § 9; A.S.A. 1947, § 19-5809.

14-204-112. Investment of public funds in bonds.

Any public funds may be invested in revenue bonds issued under the provisions of this chapter. Revenue bonds issued under this chapter shall be eligible to secure the deposit of public funds.

History. Acts 1981 (Ex. Sess.), No. 17, § 10; A.S.A. 1947, § 19-5810.

CHAPTER 205

NATURAL GAS DISTRIBUTION SYSTEMS

SECTION.
14-205-101. Construction.
14-205-102. Election on bond issue.
14-205-103. Provisions of ordinance.
14-205-104. Publication of ordinance and notice.
14-205-105. Hearing.
14-205-106. Bonds as negotiable instruments — Execution.
14-205-107. Amounts of bonds.
14-205-108. Sale of bonds — Use of proceeds.
14-205-109. Interest on bonds.
14-205-110. Bonds — Nature of indebtedness.
14-205-111. Statutory lien upon system.
14-205-112. Eminent domain.

Preambles. Acts 1951, No. 71 contained a preamble which read: "Whereas, Section 3 of Act No. 71 of the Acts of the General Assembly of the State of Arkansas for the year 1949 provides for a publication once a week for four consecutive weeks of an ordinance authorizing the issuance of revenue bonds under the terms of the act, and this is an unnecessary requirement and a burdensome expense upon any municipality undertaking to exercise the powers granted by said Act No. 71;

"Now, therefore. . ."

Effective Dates. Acts 1949, No. 71, § 13: approved Feb. 10, 1949. Emergency clause provided: "It is hereby ascertained and declared that many communities in this state are without facilities necessary for the transmission and distribution of natural gas, thereby resulting in the use of other fuels which are greatly inferior in quality and far more dangerous from the standpoint of the public peace, health and safety of the inhabitants thereof. Now therefore, this act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared and this act shall take effect and be in full force from and after its passage."

Acts 1949, No. 120, § 3: approved Feb. 19, 1949. Emergency clause provided: "It is hereby ascertained and declared that many communities in this state are without facilities necessary for the transmission and distribution of natural gas, thereby resulting in the use of other fuels which are greatly inferior in quality and far more dangerous from the standpoint of the public peace, health and safety of the inhabitants thereof. Now therefore, this act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared and this Act shall take effect and be in full force from and after its passage."

Acts 1951, No. 71, § 2: approved Feb. 9, 1951. Emergency clause provided: "It is hereby ascertained and declared that many communities in this state are without facilities necessary for the transmission and distribution of natural gas, thereby resulting in the use of other fuels which are greatly inferior in quality and far more dangerous from the standpoint of the public peace, health and safety of the inhabitants thereof. Now therefore, this act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared and this act shall take effect and be in full force from and after its passage."

Acts 1970 (Ex. Sess.), No. 50, § 4: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act being necessary for preservation of the public peace, health, and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this state and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this act. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 425, § 54. Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be

accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

RESEARCH REFERENCES

Ark. L. Rev. Comment, Municipal Bonds and Amendment 62: Clearing Up a Serbonian Bog, 39 Ark. L. Rev. 499.

CASE NOTES

Constitutionality.

Former Ark. Const. Amend. 13 (repealed) relating to the incurring of indebtedness by cities had no applicability to this chapter, which provides for revenue bonds. Austin v. Manning, 217 Ark. 538, 231 S.W.2d 101 (1950).

14-205-101. Construction.

Nothing in this chapter shall be construed as applying to municipalities now served by any existing gas transmission line or for any distribution system either publicly or privately owned.

History. Acts 1949, No. 71, § 12; A.S.A. 1947, § 19-4812.

14-205-102. Election on bond issue.

(a) Any municipality, by and with the consent of a majority of the qualified electors of the municipality voting on the question at an election held for the purpose, may issue revenue bonds for the purpose of constructing and operating transmission lines or distribution systems for natural gas.

(b) The notice, calling, publication, and conduct of the election shall be governed by the provisions of Arkansas Constitution, Amendment 13 [repealed].

History. Acts 1949, No. 71, § 1; A.S.A. 1947, § 19-4801.

A.C.R.C. Notes. It is questionable whether Ark. Const. Amend. 13 is repealed in whole or whether only those provisions that conflict with Ark. Const. Amend. 62 are repealed by Ark. Const. Amend. 62.

RESEARCH REFERENCES

Ark. L. Rev. Municipal Improvement Bonds in Arkansas, 8 Ark. L. Rev. 146.

CASE NOTES

Constitutionality.

The reference in this section to "Amendment 13" is permissible and effective and not in violation of Ark. Const., Art. 5, § 23. Austin v. Manning, 217 Ark. 538, 231 S.W.2d 101 (1950).

14-205-103. Provisions of ordinance.

(a) The ordinance providing for the issuance of the revenue bonds shall set forth a brief description of the contemplated undertaking and must include:

(1) The estimated cost thereof;

(2) The amount of the issue;

(3) The rate of interest;

(4) The time and place of payment; and

(5) Other details in connection with the issuance of the bonds.

(b) The ordinance shall declare that a statutory mortgage lien shall exist upon the property to be constructed, fix the minimum rate to be collected for gas prior to the payment of the bonds, and it shall pledge the revenues derived from the system for the purpose of paying the principal and interest on the bonds.

(c) The pledge shall fix the amount of revenue to be set apart and applied to the payment of the principal and interest on the bonds and the proportion of the balance of such revenues and income to be set aside as an adequate depreciation account and the remainder to be set aside for reasonable and proper operation.

History. Acts 1949, No. 71, § 2; A.S.A. 1947, § 19-4802.

14-205-104. Publication of ordinance and notice.

When the ordinance is adopted by the municipality's legislative body, it shall be published one (1) time in a newspaper published in the municipality, or, if there is no newspaper so published, then in a newspaper which has a bona fide general circulation within the municipality with a notice to all persons concerned stating that the ordinance has been adopted, that the municipality contemplated the issuance of the bonds described in the ordinance, and that any person interested may appear before the legislative body, upon a certain date which shall not be less than ten (10) days subsequent to the publication of the ordinance and notice, and present protests.

History. Acts 1949, No. 71, § 3; 1951, No. 71, § 1; A.S.A. 1947, § 19-4803.

14-205-105. Hearing.

At the hearing all objections and suggestions shall be heard and the governing body of the municipality may take such action as it deems proper.

History. Acts 1949, No. 71, § 4; A.S.A. 1947, § 19-4804.

14-205-106. Bonds as negotiable instruments — Execution.

(a) Bonds issued under the provisions of this chapter shall be negotiable instruments.

(b)(1) The bonds shall be executed by the presiding officer and clerk or recorder of the municipality and sealed with the corporate seal of the municipality.

(2) When an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature shall nevertheless be valid.

History. Acts 1949, No. 71, §§ 6, 7, A.S.A. 1947, §§ 19-4806, 19-4807.

Cross References. Form of bonds, § 19-9-101.

14-205-107. Amounts of bonds.

The bonds shall be issued in whatever amounts may be necessary to provide sufficient funds to pay all costs of construction, including engineering, legal, and other expenses, together with interest on the bonds themselves to date six (6) months subsequent to the estimated date of completion of the construction.

History. Acts 1949, No. 71, § 5; A.S.A. 1947, § 19-4805.

14-205-108. Sale of bonds — Use of proceeds.

The bonds shall be sold at not less than ninety cents (90¢) on the dollar. The proceeds derived therefrom shall be used exclusively for the purposes for which the bonds are issued. They may be sold at one (1) time or in parcels as funds are needed.

History. Acts 1949, No. 71, § 8; A.S.A. 1947, § 19-4808.

14-205-109. Interest on bonds.

The bonds shall bear interest at such rate or rates payable semiannually and shall be payable at such times and places not exceeding thirty-five (35) years from their date as prescribed in the ordinance providing for their issuance.

History. Acts 1949, No. 71, § 9; 1970 (Ex. Sess.), No. 50, § 1, 1975, No. 225, § 13; 1981, No. 425, § 13; A.S.A. 1947, § 19-4809.

14-205-110. Bonds — Nature of indebtedness.

(a) Bonds issued under this chapter shall be payable solely from revenues derived from the gas system.

(b) The bonds shall not, in any event, constitute an indebtedness of the municipality within the meaning of the constitutional provisions.

(c) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this chapter.

History. Acts 1949, No. 71, § 10; A.S.A. 1947, § 19-4810.

14-205-111. Statutory lien upon system.

(a) A statutory mortgage lien shall be imposed upon the gas system constructed from the proceeds of bonds authorized by this chapter. The lien shall exist in favor of the holders of the bonds and the holders of coupons attached to the bonds.

(b) The gas system shall remain subject to the statutory mortgage lien until payment in full of the principal and interest of the bonds.

History. Acts 1949, No. 71, § 11; A.S.A. 1947, § 19-4811.

14-205-112. Eminent domain.

(a) The right and power of eminent domain is conferred upon municipal corporations to enter upon, take, and condemn private property, either within or without the corporate limits of any such municipality, for the construction and operation of transmission lines or distribution systems for natural gas.

(b) The right and power of eminent domain, as conferred in this section, shall be exercised in the same manner as is provided in §§ 18-15-301 — 18-15-307 and any act amendatory or supplemental thereto.

History. Acts 1949, No. 120, §§ 1, 2; A.S.A. 1947, §§ 19-4813, 19-4814.

CHAPTER 206

ACQUISITION OF UTILITIES BY MUNICIPALITIES

SECTION.
14-206-101. Applicability.
14-206-102. Power to acquire, construct, and operate — Notice.
14-206-103. Confirmation by electors.
14-206-104. Application — Economic impact statement — Review.
14-206-105. Proof of service and notice — Filing fee.
14-206-106. Public hearing.
14-206-107. Parties to proceeding — Limited appearance.
14-206-108. Decision upon application — Burden of proof.
14-206-109. Denial — Purchase price, terms, and conditions of sale.
14-206-110. Confirmation of sale — Modification.
14-206-111. Order — Findings of fact.
14-206-112. Rehearing — Judicial review.

Cross References. Valuation method for acquisition by municipally owned electric utilities, § 14-207-101 et seq.

Effective Dates. Acts 1987, No. 110, § 11: Mar. 3, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the acquisition or purchase by a municipality of the property of any gas or electric public utility may result in adverse consequences for the customers of such gas or electric public utility and that therefore, in order to

avoid such adverse consequences for any customers, such acquisitions or purchases should be first approved by the Public Service Commission which is charged with the regulation of such gas or electric utilities and that such approval should not be granted in the absence of a clear showing that the gas or electric public utility and its customers will not be adversely affected. The existing statutory provisions do not adequately protect customers of regulated gas or electric public utilities and, therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and welfare, shall be in full force and effect from and after its passage and approval."

14-206-101. Applicability.

(a) The provisions of this chapter shall not be applicable to the acquisition of any gas or electric public utility plant or equipment by a municipality which, on March 3, 1987, owns, whether operated by it or another entity under a franchise, lease, or other agreement or arrangement between the municipality and the entity, a system for the production, transmission, delivery, distribution, or furnishing of gas or electric utility service of the type which the municipality seeks to acquire, whether or not the municipality has granted, or in the future grants, to the public utility a franchise as defined elsewhere in this chapter.

(b) The valuation provisions of § 14-206-109(b)(2)(A)-(E) shall have no application to any proceedings involving acquisition by a municipality described in this section of any gas or electric public utility plant or equipment.

History. Acts 1987, No. 110, § 9.

14-206-102. Power to acquire, construct, and operate — Notice.

(a) When authorized by order of the Arkansas Public Service Commission, and not otherwise, a municipality shall have the power, subject to the provisions of this chapter, to acquire by purchase, to construct, and to operate a gas or electric public utility plant and equipment, or any part thereof, for the production, transmission, delivery, or furnishing of any public service.

(b)(1) Any gas or electric public utility accepting or operating under any permit, license, or franchise heretofore or hereafter granted by any municipality, by acceptance of any such permit, license, or franchise, shall be deemed to have consented to a future purchase by the municipality of its distribution property located within the boundaries of the municipality which is actually used and useful for the convenience of the public:

(A) Upon the municipality's compliance with the requirements and conditions set forth in this chapter; and

(B) Upon receipt by the gas or electric public utility of the payment by payment by the municipality of the purchase price as determined in accordance with the provisions of this chapter.

(2) However, the purchase price for the gas or electric public utility property shall be no less than the just compensation and damages to which the gas or electric public utility would otherwise be entitled under the constitution of this state or that of the United States.

(c)(1) By accepting or operating under any such permit, license, or franchise, the gas or electric public utility shall thereby be deemed to have waived the right of the necessity of the taking, to be established by the verdict of a jury, and to have waived all other procedural remedies and rights relative to condemnation, except such rights and remedies as are provided in this chapter.

(2) However, the municipality shall give the gas or electric public utility not less than ninety (90) days' written notice of its intention to make the purchase prior to taking any action to acquire those properties under this chapter.

History. Acts 1987, No. 110, § 1.

14-206-103. Confirmation by electors.

(a) Any municipality may determine to seek approval from the commission to acquire the property of a gas or electric public utility as authorized under the provisions of this chapter by the vote of the municipal council, city commission, or governing body, taken after a public hearing, of which at least thirty (30) days' notice has been given by publication in newspapers having a general circulation within the municipality. This vote shall have been ratified and confirmed by a majority of the electors voting thereon at any general or special election held not less than thirty (30) days after a passage of the vote of the municipal council or city commissioners.

(b) In the event the vote of the municipal council, city commission, or governing body is ratified and confirmed by a majority of the electors voting thereon, the clerk of the municipality shall notify the commission of the results of the election within ninety (90) days thereafter. Within one (1) year after the election, the municipality may file with the commission an application for approval of a certificate for the acquisition or purchase of the property of a gas or electric public utility as provided in this chapter.

History. Acts 1987, No. 110, § 2.

14-206-104. Application — Economic impact statement — Review.

(a) In its application for a certificate, the municipality shall file with the commission a verified application in such form as the commission shall by rule prescribe. It shall contain the following information:

(1) A description of the gas or electric utility property proposed to be acquired;

(2) The estimated costs of those properties and the proposed method of financing the acquisition of those properties;

(3) An analysis of the projected economic or financial impact on the municipality, the gas or electric public utility from which those properties will be acquired and its customers, and the local community where the property is located as a result of the acquisition and the operation of those properties by the municipality;

(4) The estimated effects on energy costs to the customers of the gas or electric public utility and the customers to be served by the municipality as a result of the acquisition and operation of those properties by the municipality;

(5) A statement of how the municipality will comply with all applicable laws and regulations to assure that the public health, safety, economy, and convenience will not be adversely affected;

(6) A demonstration that the municipality is technically and financially qualified to engage in the proposed activities in accordance with all applicable laws and regulations; and

(7) Such other information as the municipality may consider relevant or as the commission may by regulation or order require.

(b) In addition, the commission shall by rule or regulation require the filing of an exhibit containing an economic impact statement with the application. The statement shall fully develop the factors listed in subsection (a) of this section, treating in reasonable detail such consideration, if applicable, of the proposed acquisition's direct and indirect effect on:

(1) The municipality;

(2) The customers to be served by the municipality;

(3) The gas or electric public utility from which the properties will be acquired;

(4) The remaining customers of the gas or electric public utility; and

(5) The local economy.

(c) Promptly after filing, the staff of the commission shall invite comments from the gas or electric public utility which owns the property and all state agencies entitled to service under § 14-206-105 as to the adequacy of the municipality's statements. The invitation to comment shall advise the gas or electric public utility and the state agencies that comments must be received within sixty (60) days of the date of mailing or delivery thereof, unless the commission, upon request of the gas or electric public utility or an agency, approves a longer period for consideration.

(d) Upon review of those comments, if any, if the staff shall determine that the municipality failed to include or adequately develop an aspect of the acquisition of the property, it shall then issue a deficiency letter pointing out in detail all such specific deficiencies in the application. The deficiency letter shall be prepared and served upon the municipality no later than thirty (30) days after the last comments were filed. The municipality shall promptly respond to any deficiency letter.

History. Acts 1987, No. 110, § 3.

14-206-105. Proof of service and notice — Filing fee.

(a)(1) Each application shall be accompanied by proof of service of a copy of the application on the gas or electric public utility which owns the property and on the director or other administrative head of the following state agencies or departments:

(A) Department of Pollution Control and Ecology;

(B) Department of Economic Development;

(C) Department of Finance and Administration;

(D) Arkansas Energy Office;

(E) Attorney General;

(F) Any school district or other political subdivision of this state that is the recipient of real and personal property taxes in which any of the gas or electric utility properties to be acquired by the municipality may be located; and

(G) Any other state agency or department or political subdivision of this state designated by commission regulation or order.

(2) The copy of the application shall be accompanied by a notice specifying the date on or about which the application is to be filed and a notice that interventions or limited appearances must be filed with the commission within thirty (30) days after the date of filing, unless good cause is shown.

(b)(1) Each application shall also be accompanied by proof that public notice thereof was given to persons residing in the municipality by the publication of a summary of the application, and a statement of the date on which it is to be filed, and a statement that interventions or limited appearances must be filed with the commission within thirty (30) days after the filing date set forth in the notice, unless good cause is shown, in a newspaper or newspapers having substantial circulation in the municipality.

(2) For purposes of this subsection, any economic impact statement submitted as an exhibit to the application need not be summarized. However, the published notice shall include a statement that the impact statements are on file at the office of the commission and available for public inspection.

(3) The municipality shall also cause copies of the economic impact statement to be available for public inspection. The published notice shall contain a statement of the location and the times the impact statements will be available for public inspection.

(4) In addition, the commission may, after filing, require the applicant to serve notice of the application or copies of it, or both, upon such other persons, and file proof thereof, as the commission may deem appropriate.

(c) Where any personal service or notice is required in this section and § 14-206-104, service may be made by any officer authorized by law to serve process by personal delivery or by certified mail.

(d) An initial filing fee of five hundred dollars ($500) shall accompany each application.

History. Acts 1987, No. 110, § 3; 1997, No. 540, § 63.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: "'Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality' (a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

Amendments. The 1997 amendment substituted "Department of Economic Development" for "Department of Industrial Development" in (a)(1)(B).

14-206-106. Public hearing.

Upon receipt of an application complying with §§ 14-206-104 and 14-206-105, the commission shall fix a date for the commencement of a public hearing on the application. The testimony presented at the hearing may be presented in writing or orally. The commission may make rules designed to exclude repetitive, redundant, or irrelevant testimony.

History. Acts 1987, No. 110, § 4.

14-206-107. Parties to proceeding — Limited appearance.

(a) The parties to the proceeding shall include the municipality and the gas or electric public utility which owns the property. In addition, each county and government agency or department or other person entitled to receive service of a copy of the application under § 14-206-105(a) shall be a party if it has filed with the commission a notice of intervention as a party within thirty (30) days after the service. A party to the proceeding shall also include any person whose petition for intervention is approved by the commission.

(b)(1) Any person may make a limited appearance in the proceeding by filing a verified statement of position within thirty (30) days after the date given in the public notice as the date of filing the application. No person making a limited appearance shall be a party or shall have the right to receive further notice or to cross-examine witnesses on any issue outside the scope of its statement of position.

(2) A person making a limited appearance is subject to being called for cross-examination only on the subject matter of the statement of position by the applicant or other party. If a person fails to appear for cross-examination, if called, the statement of position may be stricken from the record at the discretion of the commission.

History. Acts 1987, No. 110, § 5.

14-206-108. Decision upon application — Burden of proof.

(a) The commission shall render a decision upon the record either granting or denying the application as filed or granting it upon such terms, conditions, or modifications of the financing, acquisition, operation, or maintenance of the property as the commission may deem appropriate. The commission may not grant a certificate for the financing, acquisition, operation, and maintenance of any property, either as proposed or as modified by the commission, unless it shall find and determine:

(1) The nature of the probable economic impact of the acquisition on the customers of the gas or electric public utility that owns the property and on the customers to be served by the municipality;

(2) That the method of financing the acquisition, either as proposed or as modified by the commission, represents an acceptable economic impact, considering economic conditions and the need for and cost to the municipality of additional gas or electric public utility services;

(3) That the acquisition of the properties, the gas or electric public utility functions to be performed, the operating procedures, the properties and equipment, and the use of the properties collectively provide reasonable assurance that the municipality will comply with all applicable laws and regulations and that the public health, safety, economy, and convenience will not be adversely affected;

(4) That the municipality is technically and financially qualified to acquire and operate the proposed properties in accordance with all applicable laws and regulations;

(5) That the issuance of the certificate will not be detrimental to the public health, safety, economy, and convenience; and

(6) That the acquisition will serve the public interest, convenience, and necessity.

(b) Any municipality which files an application for approval of the acquisition or purchase of any gas or electric utility property shall have the burden of proof with respect to every element of the application. The commission shall not approve any application for approval of the purchase or acquisition by any municipality of any property of a gas or electric public utility unless it shall be shown at the hearing upon the application for approval of the acquisition, by the clear preponderance of the evidence, that neither the gas or electric public utility nor the customers of the gas or electric public utility will be adversely affected by the proposed acquisition or purchase.

History. Acts 1987, No. 110, § 6.

14-206-109. Denial — Purchase price, terms, and conditions of sale.

(a) In the event that the commission determines, on the basis of the evidence, that either the gas or electric public utility or its customers will be adversely affected by the proposed acquisition or purchases, it shall deny the application for approval.

(b)(1) In the event the commission determines, on the basis of the evidence, that the requested approval should be granted, it shall fix the purchase price to be paid by the municipality to the gas or electric public utility for any properties to be purchased from the gas or electric utility as well as all other terms and conditions of the purchase and sale.

(2) The amount to be paid shall include, but shall not be limited to, the total of the following elements:

(A) The present-day reproduction cost, new, of the facilities being acquired, adjusted for remaining life expectancy;

(B) An amount equal to the cost of constructing any necessary facilities to reintegrate the system of the gas or electric utility outside the area to be acquired after detaching the portion to be sold;

(C) An amount sufficient to reimburse the gas or electric utility for reasonable expenses it incurs preparing the aforementioned reproduction cost, new, adjusted for remaining life expectancy, including the appraisal, and all other expenses including, but not limited to, employee salaries, overheads, consultants' fees and attorneys' fees incurred in connection with the acquisition of the facilities;

(D)(i) An amount equal to any severance damages which will be incurred by the gas or electric utility. Severance damages shall be measured by the present value of the estimated revenue requirements associated with any investment in plant, gas supply, expenses incurred, or other costs which would have been allocated to or paid by the gas or electric public utility's customers in that portion of the gas or electric public utility's service area to be acquired or served by the municipality and which could be shifted to or allocated to other customers of the gas or electric public utility as a result of the acquisition of the properties by the municipality.

(ii) The estimated present value of any such revenue requirements shall include, but shall not be limited to, the estimated revenue requirements associated with:

(*a*) The investment in, or other costs incurred with respect to, existing substations, compressor stations, and other distribution, transmission, or generating facilities;

(*b*) Expenses incurred under purchased power contracts or gas supply contracts except to the extent the expenses arise from a plant which is not then in commercial operation;

(*c*) Real property owned or leased by the gas or electric public utility; or

(*d*) Other costs which would have been allocated to the customers in that portion of the gas or electric utility's service area to be acquired or served by the municipality;

(iii) The estimated revenue requirements shall be estimated for such reasonable period of time in the future as may be justified by the applicable facts and circumstances, but in no event shall that period of time be less than a period of ten (10) years after the date the purchase is projected to be consummated;

(E) An amount sufficient to reimburse the gas or electric utility for any federal or state income tax effect, if any, requiring payment of either federal or state income tax because of the involuntary transfer, which taxes are related to recapture of tax benefits from:

(i) Investment tax credit or investment tax credit carry-forwards or other accelerated income tax benefits;

(ii) Other income tax benefits, which have been flowed through to ratepayers through the setting of rates by a regulatory commission, that reflect either the amortization of investment tax credits or other accelerated income tax benefits; and

(iii) An amount sufficient to reimburse the gas or electric utility for any federal or state income tax effects that result from the use of a net of tax allowance for funds used during construction rate by the gas or electric utility in either the accounting for construction costs on its books or the calculation of the depreciated replacement cost.

History. Acts 1987, No. 110, § 6; 1987, No. 378, § 1.

14-206-110. Confirmation of sale — Modification.

(a) The commission shall by order fix, determine, and certify to the municipal governing body, to the gas or electric public utility, and to any bondholders, mortgagees, and lienors of the gas or electric utility appearing at the hearing, the purchase price to be paid for the taking and severance of the property of the gas or electric public utility and all other terms and all conditions of sale and purchase that it shall ascertain to be reasonable, which terms and conditions shall constitute the compensation and damages to be paid, and the other terms and conditions of the sale and purchase.

(b) Upon the filing of the order by the commission with the clerk of the municipality, the municipality shall thereupon be obligated to make the required payment and otherwise comply with the terms and conditions of the order to consummate the purchase.

(c) Upon the consummation of the purchase, the gas or electric public utility shall execute an instrument conveying the property purchased and paid for by the municipality, and the municipality may take over the control and operation of the property.

(d) Unless the purchase price is paid and the purchase consummated within one hundred eighty (180) days after the filing of the commission's order with the clerk of the municipality, the commission's order shall be considered null and void.

(e) If the commission determines that all or part of the proposed acquisition should be modified, it may condition its approval of the acquisition upon the modification.

History. Acts 1987, No. 110, § 6.

14-206-111. Order — Findings of fact.

In rendering a decision on the application for approval of the acquisition, the commission shall issue and serve upon all parties an order, which shall include, or be accompanied by, findings of fact stating its reasons for the action taken.

History. Acts 1987, No. 110, § 7.

14-206-112. Rehearing — Judicial review.

Any party aggrieved by any decision issued on an application for approval of the acquisition may apply for a rehearing as provided in § 23-2-401, and §§ 23-2-421 — 23-2-424. A party aggrieved by the final decision of the commission on rehearing may obtain judicial review of the decision in accordance with the provisions of § 23-2-401, and §§ 23-2-421 — 23-2-424.

History. Acts 1987, No. 110, § 8.

CHAPTER 207

VALUATION OF PROPERTIES AND FACILITIES UPON ANNEXATION

SECTION.
14-207-101. Definitions.
14-207-102. Confirmation of ownership rights.
14-207-103. Right to acquire properties, facilities, and customers.
14-207-104. Procedures and valuation formula.
14-207-105. Valuation data.
14-207-106. Exercise of power of eminent domain.

A.C.R.C. Notes. Acts 1991, No. 745, § 7, in part, provided: "This Act shall be applicable to all acquisitions of electric public utility properties coming within municipalities owning or operating electric utility systems on or after the effective date of this Act. Acquisitions of electric public utility properties located within municipalities owning or operating electric utility systems prior to the effective date of this Act shall be governed by Act 639 of 1989 (including provisions specifically repealed by this Section) or other law, if any, applicable prior to the effective date of this Act."

Cross References. Acquisition of utilities by municipalities, § 14-206-101 et seq.

Effective Dates. Acts 1989, No. 639, § 10: Mar. 17, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the acquisition or purchase by a municipality of the property of any electric public utility may result in adverse impacts upon the customers of such electric public utility. The existing statutory provisions do not adequately insure a fair and uniform valuation method to protect customers of regulated electric public utilities and the taxpayers of municipalities owning electric utililties. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 745, § 8: Mar. 26, 1991.

Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that the acquisition of the properties, facilities and customers of an electric public utility by a municipality which owns or operates an electric utility system may result in an adverse impact on the electric public utility, that Act 639 of 1989 was enacted to alleviate this situation but that certain sections of Act 639 of 1989, codified as Arkansas Code, Title 14, Chapter 207, need to be amended to strengthen and clarify the procedures. Therefore, in order to strengthen and clarify the intent of Arkansas Code, Title 14, Chapter 207, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

14-207-101. Definitions.

As used herein the following terms shall have the following definitions:

(1) "Municipality" shall mean both Arkansas municipal corporations and consolidated municipal utility improvement districts;

(2) "Electric public utility" and "electric public utility system" shall include persons, corporations, and other entities providing electric power to the public at wholesale or retail, but shall not include electric cooperative corporations providing electric power predominantly for resale;

(3) "Franchise" or "franchise agreement" shall mean an agreement between a municipality which owns or operates an electric utility system and an electric public utility, including, but not limited to franchise agreements within the meaning of Act 324 of 1935, as amended, whereby the electric public utility continues to serve customers in its allocated service area and pays to the municipality which owns or operates an electric utility system franchise fees in accordance with applicable law and the rules and regulations of the Arkansas Public Service Commission.

History. Acts 1989, No. 639, § 1; 1991, No. 745, § 1.

Publisher's Notes. Acts 1935, No. 324, referred to in this section, is codified as §§ 14-200-101, 14-200-103 — 14-200-108, 14-200-111, 23-1-101 — 23-1-112, 23-2-301, 23-2-303 — 23-2-308, 23-2-310, 23-2-312, 23-2-314 — 23-2-316, 23-2-402, 23-2-404[repealed], 23-2-405, 23-2-408, 23-2-410 — 23-2-412, 23-2-414 — 23-2-421, 23-2-426, 23-2-428, 23-2-429, 23-3-101 — 23-3-107, 23-3-112 — 23-3-115, 23-3-118, 23-3-119, 23-3-201 — 23-3-206, 23-4-102, 23-4-103, 23-4-105 — 23-4-109, 23-4-205, 23-4-402 — 23-4-405, 23-4-407 — 23-4-418, 23-4-620 — 23-4-634, 23-18-101.

14-207-102. Confirmation of ownership rights.

The right of Arkansas municipal corporations and consolidated municipal utility improvement districts currently owning and operating electric utility systems is hereby ratified and confirmed.

History. Acts 1989, No. 639, § 2.

14-207-103. Right to acquire properties, facilities, and customers.

(a)(1) Unless otherwise agreed between a municipality which owns or operates an electric utility system and an electric public utility, the inclusion by annexation, whether voluntary or involuntary according to applicable law, of any part of the assigned service area of an electric public utility within the boundaries of any Arkansas municipality shall not in any respect impair or affect the rights of the electric public utility to continue and extend electric service throughout any part of its assigned service area unless a municipality which owns or operates an electric utility system elects, within three (3) years after the certification of annexation, to purchase from the electric public utility all customers, distribution properties, and facilities reasonably utilized or reasonably necessary to serve customers of the electric public utility within the annexed areas in accordance with the provisions of this subchapter.

(2) If the municipality which owns or operates an electric utility system and the electric public utility agree to a franchise agreement for a specific term of years, unless otherwise agreed, the municipality's obligation to elect to acquire public utility properties within a period of three (3) years as required by this subsection shall not commence until the termination of the franchise agreement.

(3) A municipality which owns or operates an electric utility system and an electric public utility may agree to franchise agreements defined in § 14-207-101(3), whether or not the service territory of the electric public utility is brought into the municipality's corporate limits before or after March 26, 1991.

(4) Unless otherwise agreed between a municipality which owns or operates an electric utility system and an electric public utility, a municipality may not undertake or commence any construction or operation of any equipment or facilities for the supplying of electric service, or extension thereof, to the annexed areas without having made a timely election and complying with the provisions of this subchapter. Any violation shall vest the affected electric public utility with a right to injunctive relief.

(b)(1) The municipality shall give a six-months' written notice to the electric public utility of its election to acquire from the electric public utility all customers, distribution properties, and facilities reasonably utilized or reasonably necessary to serve customers of the electric public utility within the annexed areas.

(2) Within the six-month period after the notification, the municipality and the electric public utility shall meet and negotiate in good faith the terms of the acquisition, including, as an alternative, granting the electric public utility a franchise or franchise agreement to serve the annexed area.

(3) In the event that the electric public utility system does not provide wholesale power service to the municipality acquiring its

properties, facilities, and customers, the municipality and the electric public utility shall also negotiate, consistent with the laws, rules, and regulations of appropriate authorities and existing power supply agreements, for power contracts which would provide for the purchase of power by the municipality from the electric public utility for an amount of power equivalent to the loss of any sales to customers of the electric public utility acquired by the municipality under this subchapter.

History. Acts 1991, No. 745, § 2.

Publisher's Notes. Former § 14-207-103, concerning right to acquire properties and facilities, was repealed by Acts 1991, No. 745, § 7 The former section was derived from Acts 1989, No. 639, § 3.

CASE NOTES

Applicability.

When a city acquires a public utility's properties or facilities, it owes compensation to the utility under § 14-207-106. Further, in the event the utility provides no electricity to the city acquiring its properties or facilities, then the city must compensate the utility as described under subsection (b) of § 14-207-106 (see now § 14-207-104). When the city, however, does not acquire the utility's properties or facilities, this chapter does not apply. Instead, the utility merely becomes an alternative supplier, and the city and the utility can both provide electrical service to the area and compete for customers. Carroll Elec. Coop. Corp. v. City of Bentonville, 306 Ark. 572, 815 S.W.2d 944 (1991) (decision under prior law).

14-207-104. Procedures and valuation formula.

(a) In the event that an agreement pursuant to § 14-207-103(a) or (b) cannot be reached within such six-month period, the municipality shall pay to the electric public utility an amount equal to the following:

(1) The present-day reproduction cost, new, of the properties and facilities being acquired, less depreciation computed on a straight-line basis; plus

(2) An amount equal to the cost of constructing any necessary facilities to reintegrate the system of the electric public utility outside the annexed area after detaching the portion to be sold; plus

(3) In the event that the electric public utility system does not provide wholesale power service to the municipality acquiring its properties, facilities, and customers under this subchapter, then, in addition to the amounts required by subdivisions (a)(1) and (2) of this section, the municipality shall pay the electric public utility either:

(A) Three hundred fifty-five percent (355%) of gross revenues less gross receipts taxes received by the electric public utility for the twelve-month period preceding notification from customers in the annexed area; or

(B) The amount required by subdivision (a)(3)(A) of this section payable over five (5) years with interest at the then-prevailing AAA insured tax-exempt municipal bond interest rate.

(b) In the event that the electric public utility system ceases to provide wholesale power service to the municipality prior to five (5) years after the acquisition of the properties, facilities, and customers of

the electric power utility under this subchapter, then the municipality will pay, pro rata for the remainder of such five-year period, in accordance with subdivision (a)(3)(B) of this section.

History. Acts 1991, No. 745, § 3.
Publisher's Notes. Former § 14-207-104, concerning procedures and valuation formula, was repealed by Acts 1991, No. 745, § 7. The former section was derived from Acts 1989, No. 639, § 4.

14-207-105. Valuation data.

The public utility shall provide to the municipality all data and information required to establish valuations under this subchapter, provided, however, that the municipality shall, at the time of the transfer under § 14-207-104, reimburse the public utility for reasonable costs of appraisal, engineering, and incidental expenses associated with establishing valuation.

History. Acts 1989, No. 639, § 5.

14-207-106. Exercise of power of eminent domain.

(a) At the conclusion of the six-month notification period, in the event that agreement is not reached pursuant to § 14-207-103(a) or (b), or the municipality and the electric public utility disagree on the valuations described in § 14-207-104, but no later than three (3) years from certification of annexation or three (3) years from termination of any franchise agreement authorized by this subchapter, the municipality may, after paying, or, if applicable, commencing payment of, any amounts not in dispute and depositing into the registry of the court the amount in dispute, or such lesser amounts as the court, after hearing, determines to be just, exercise the right and power of eminent domain under the procedures of § 18-15-301 et seq., and may take possession of the properties and facilities and commence service to the customers as of the date it makes the deposit; provided, however, that any compensation or damages for the properties, facilities, and customers taken shall be determined in accordance with § 14-207-104.

(b) The date of taking for the purposes of this subchapter shall be either the date the deposit authorized by this section is made or, in the event no deposit is made, the date of the court award.

History. Acts 1991, No. 745, § 4.
Publisher's Notes. Former § 14-207-106, concerning exercise of power of eminent domain, was repealed by Acts 1991, No. 745, § 7. The former section was derived from Acts 1989, No. 639, § 6.

CASE NOTES

Applicability.

When a city acquires a public utility's properties or facilities, it owes compensation to the utility under this section. Further, in the event the utility provides no electricity to the city acquiring its properties or facilities, then the city must compensate the utility as described in this section. When the city, however, does not acquire the utility's properties or facilities, this chapter does not apply. Instead, the utility merely becomes an alternative

supplier, and the city and the utility can both provide electrical service to the area and compete for customers. Carroll Elec. Coop. Corp. v. City of Bentonville, 306 Ark. 572, 815 S.W.2d 944 (1991) (decision under prior law).

CHAPTERS 208-215

[Reserved]

SUBTITLE 13. PUBLIC UTILITY IMPROVEMENT DISTRICTS

CHAPTER 216

GENERAL PROVISIONS

SECTION.

14-216-101. Power of improvement districts to finance electric facilities system.

Effective Dates. Acts 1983, No. 796, § 5: Mar. 24, 1983. Emergency clause provided: "It has been found by the General Assembly that there is a lack of clarity and in some instances a lack of agreement regarding the ability of Arkansas municipalities and improvement districts to finance electric system facilities without the approval of the Arkansas Public Service Commission and that this lack of clarity places a substantial burden on the financing of such facilities and may result in costly delays. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in force upon its passage and approval."

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp. & Coun., § 560 et seq.

C.J.S. 20 C.J.S., Electr., § 8.

14-216-101. Power of improvement districts to finance electric facilities system.

(a) Any improvement district owning and operating any system for the generation, transmission, or distribution of electric power or energy may issue revenue bonds and pledge the revenues derived from the system, whether the revenues are derived from within or beyond the corporate limits of the district, as may be permitted or authorized by applicable law without obtaining the approval of the Arkansas Public Service Commission.

(b) Nothing in this section should be construed to authorize any improvement district to issue or sell bonds or use the proceeds thereof to purchase, condemn, or otherwise acquire a utility plant or distribution system or portion thereof owned or operated by a public utility without the consent of the public utility.

History. Acts 1983, No. 796, §§ 1, 2; A.S.A. 1947, § 73-115.1.

CHAPTER 217

GENERAL CONSOLIDATED PUBLIC UTILITY SYSTEM IMPROVEMENT DISTRICTS

SECTION.
14-217-101. Title.
14-217-102. Purpose of chapter.
14-217-103. Definitions.
14-217-104. Application and construction of chapter.
14-217-105. Creation of consolidated utility districts — Petition — Notice of hearing.
14-217-106. General powers and purposes of districts.
14-217-107. Rights and powers of districts pertaining to assessments, repairs, and sale of property.
14-217-108. Location of consolidated system.
14-217-109. Payment of costs — Authority to use funds and revenues and to issue bonds.
14-217-110. Bonds generally.
14-217-111. Bonds — Mortgage lien.
14-217-112. Bonds — Default — Receiver.
14-217-113. Refunding bonds.
14-217-114. Bonds — Tax exemption.
14-217-115. Investment of public funds in bonds.

Publisher's Notes. As to applicability of certain laws to municipal improvement districts existing prior to July 1, 1952, see §§ 14-90-102 and 14-90-103.

Effective Dates. Acts 1975, No. 490, § 16: Mar. 19, 1975. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the present uncertainty and confusion in the laws of the State pertaining to consolidated utility districts and their powers and functions is the cause of delays and inefficiencies in the construction and operation of consolidated utility systems and that it is essential to the continued development of the State and the health and welfare of its inhabitants that this condition be corrected immediately. An emergency therefore is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health, and safety shall be in full force upon its approval."

Acts 1977, No. 518, § 4: Mar. 18, 1977. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that because of certain decisions of the United States Supreme Court, there has been uncertainty and confusion with respect to the constitutionality of the manner of electing members of boards of commissioners of those consolidated utility districts wherein such members have heretofore been required to be elected by the owners of real property within the district, and that it is essential to the continued development of this State and the health and welfare of its inhabitants that such condition be corrected immediately so that the construction and operation of the consolidated utility systems affected can proceed on an orderly basis. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 527, § 4: Mar. 22, 1979. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that the authority for consolidated municipal utility improvement districts to engage in joint or cooperative undertakings has been limited to undertakings with public utility corporations, that the continued construction and operation of the consolidated utility systems require from time to time undertakings with municipalities and other persons, and that it is essential to the continued development of this State and the health and welfare of

its inhabitants that such condition be corrected immediately so that the construction and operation of the consolidated utility systems affected can proceed on an orderly basis. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

14-217-101. Title.

This chapter shall be known as the "General Consolidated Public Utility System Improvement District Law."

History. Acts 1975, No. 490, § 1; A.S.A. 1947, § 20-1901.

14-217-102. Purpose of chapter.

(a) It has been found and determined by the General Assembly that:

(1) There exists a great deal of uncertainty and confusion in the laws of this state pertaining to municipal improvement districts created for the construction and operation of consolidated utility systems as defined in § 14-217-103;

(2) Some of these districts were created by special acts which can no longer be amended;

(3) The uncertainty and confusion contained in existing laws retards the creation of new districts and the growth and development of existing districts;

(4) This uncertainty and confusion can be corrected only by the enactment of a general law defining and clarifying the functions and powers of such districts.

(b) It is the purpose of this chapter, therefore, to provide a uniform and workable definition of the powers and functions of such districts.

History. Acts 1975, No. 490, § 2; A.S.A. 1947, § 20-1902.

14-217-103. Definitions.

Whenever used in this chapter, unless the context otherwise requires:

(1) "Consolidated utility district" or "district" means any municipal improvement district created before March 19, 1975, pursuant to special act or general act, or created after March 19, 1975, pursuant to

this chapter, for the purpose of constructing, or operating and maintaining, a consolidated utility system;

(2) "Consolidated utility system," or "consolidated system," or "system" means any system of public utilities together with any facilities related to or necessary or appropriate to the construction, operation, or maintenance consisting of:

(A) A combined water system and sewer system; or

(B) An electric system consolidated or combined with a water system or with a sewer system;

(3) "Electric system" means any system for the production, generation, transmission, or delivery of electricity;

(4) "Water system" means any system for the acquisition, treatment, storage, transmission, or delivery of water;

(5) "Sewer system" means any system for the collection, transmission, treatment, or disposal of liquid or solid industrial or domestic waste;

(6) "Major utility facility" or "major facility" means any electric generating plant or bulk water supply facility and related necessary appurtenant land and land rights, substation, fuel, fuel handling and storage equipment, and similar necessary equipment;

(7) "Construct" or "construction" means to acquire, construct, reconstruct, extend, improve, install, or equip any system or portion thereof;

(8) "Municipality" means any city of the first class, city of the second class, or incorporated town;

(9) "Governing body" means the council, board of directors, commission, or other governing body of a municipality;

(10) "City clerk" means city clerk, city recorder, town recorder, or other similar office hereafter created or established;

(11) "Public utility corporation" means any public utility as defined in § 23-1-101;

(12) "Person" means any natural person, firm, corporation, or association;

(13) "Bonds" means bonds issued under the authority of this chapter, whether assessment secured bonds or revenue bonds;

(14) "Assessment secured bonds" means bonds described in and issued under the authority of § 14-217-109(c);

(15) "Revenue bonds" means bonds described in and under the authority of § 14-217-109(b);

(16) "Board of commissioners" or "board" means the board of commissioners, board of directors, board of improvement, or other governing board of a district;

(17) "Commissioner" means any member of a board of commissioners.

History. Acts 1975, No. 490, § 3; A.S.A. 1947, § 20-1903.

Cross References. Notice on formation of improvement districts, § 14-86-301 et seq.

14-217-104. Application and construction of chapter.

(a) This chapter shall apply to any consolidated utility district already created and to any consolidated utility district which may be created pursuant to this chapter.

(b) This chapter shall constitute the complete and sole necessary authority to carry out the purposes of this chapter.

(c) This chapter is intended as supplemental to all other laws which authorize any of the purposes described in this chapter. This chapter may be relied upon and used as an alternative to any other laws by a consolidated utility district, without the necessity of compliance with the requirements of the other laws, in the accomplishment of any of the purposes described in this chapter.

(d) Nothing in this chapter shall be construed to reduce or take away any of the powers conferred prior to March 19, 1975 upon any district by special act or judicial decree.

(e) Except as provided in this subsection, the form of government or administration of any district as established by or pursuant to the authority of any special act or judicial decree before March 19, 1975, including the composition of and the method of selection of the members of any board of commissioners, shall continue in full force and effect as so established and all of which are ratified and confirmed. However, any member of any board of commissioners of any such district who has prior to March 19, 1975 been elected by the owners of real property within the district shall after March 19, 1975, commencing with the next regular election for the member prescribed by general or special law applicable to the district, be elected by all persons who are qualified electors of the municipality served by the district in which they reside, each resident to have one (1) vote. In any district in which commissioners are elected, the ownership of real property in the district shall not be a qualification to hold the office of commissioner. Nothing in this chapter shall be construed to affect or impair any action taken before March 19, 1975 by any board of commissioners of any such district or any bonds or other obligations issued prior to March 19, 1975 by any district, all of which are validated, ratified, and confirmed.

(f) Nothing in this chapter shall be construed to confer upon any district any power which by the Arkansas Constitution may be conferred only with the approval of a required portion of the owners of real property in the district unless approval has been or is acquired.

(g) Nothing in this chapter shall be construed to authorize any district or any municipality to issue or sell bonds or use the proceeds thereof to purchase, condemn, or otherwise acquire a utility system or part thereof owned or operated by a public utility corporation without the consent of the public utility corporation.

History. Acts 1975, No. 490, §§ 4, 14; 1977, No. 518, § 1; A.S.A. 1947, §§ 20-1904, 20-1914.

14-217-105. Creation of consolidated utility districts — Petition — Notice of hearing.

(a) Upon the petition of at least two-thirds (⅔) majority in assessed value, as shown by the last county assessment and the deed records in the office of the circuit clerk and ex officio recorder, of the owners of real property in any territory all or the larger portion of which lies within the corporate limits of any municipality, the governing body of the municipality shall, by ordinance, lay off into a consolidated utility district the territory described in the petition and shall appoint as commissioners of the district the three (3) persons who are nominated in the petition for the office of commissioner, provided that they are owners of real property in the district. If the petition does not contain the names of persons nominated as commissioners, the governing body shall appoint as commissioners three (3) owners of real property in the district.

(b) All such districts shall be numbered or given names as determined by the governing body. If the governing body does not act promptly to comply with the terms of this section, or of any other section of this chapter necessary to the creation or operation of the district, it may be compelled to do so by mandamus.

(c) The petition shall set forth the purposes of the district, and any district created under this chapter shall have all powers necessary or appropriate to the accomplishment of those purposes as provided in this chapter.

(d) The petition shall be filed with the city clerk. Upon the filing of the petition it shall be the duty of the city clerk to give notice that the petition will be heard at a meeting of the governing body of the municipality at the time set forth in the notice. The notice shall be published once a week for not less than two (2) weeks in a newspaper of general circulation in the municipality. The notice may be in the following form:

"All owners of real property within the following described territory . . . . (description of territory to be included in the district). . . . are hereby notified that a petition has been filed with the city clerk of the city of . . . . (name of municipality). . . . purporting to be signed by at least a two-thirds (⅔) majority in assessed value of the owners of real property within the territory, which petition prays that a consolidated utility district be formed embracing the territory, for the purpose of . . . . (description of consolidated system in general terms). . . . and that the cost thereof be assessed against the real property situated in the territory. All owners of real property within the territory are advised that the petition will be heard at a meeting of the . . . . (governing body). . . . to be held at . . . . . .M., on . . . . . , 19 . . . . , and that at that meeting the . . . . (governing body). . . . will determine whether those having signed the petition constitute at least a two-thirds (⅔) majority in assessed value of the owners of real property within the territory. At the meeting, all owners of real

property within the territory who so desire will be heard upon the question."

History. Acts 1975, No. 490, § 5; A.S.A. 1947, § 20-1905.

Cross References. Notice of formation of improvement districts, § 14-86-301 et seq.

14-217-106. General powers and purposes of districts.

In addition to any purposes and powers authorized elsewhere in this chapter, consolidated utility districts created prior to March 19, 1975, whether pursuant to special act or general law or created after March 19, 1975, subject, in the case of any district created after March 19, 1975, to the terms of the petition for creation of such district, may carry out and shall have the following purposes and powers:

(1) To construct consolidated utility systems;

(2) To operate and maintain consolidated utility systems;

(3) To sell or lease any consolidated system owned by it to or from any public utility corporation, municipality, or other person;

(4) To enter into contracts including, without limitation, contracts with any public utility corporation, municipality, or other person, concerning the normal operation and maintenance of any system owned by the district;

(5) To enter into agreements with public utility corporations, municipalities, or other persons for the joint or cooperative ownership, financing, construction, or operation and maintenance of any major facility of a utility system. In particular, but without limiting the generality of the foregoing, any district may participate in the financing of any major utility facility owned or to be owned by the other party to the agreement in exchange for the ownership of a portion or the use of the major facility or for an agreed upon portion of the electricity or water thereof. Any such agreement:

(A) May provide for the creation of a joint board or committee for administration of the undertaking covered by the agreement or for the delegation of authority to administer such an undertaking to one or more parties to the agreement;

(B) May contain provisions specifying the ownership interests of the parties in a major utility facility, including provisions permitting or requiring the exchange by a district with one (1) or more other parties to the agreement of an interest in one (1) or more portions of the major facility for an interest in one (1) or more other portions thereof, and specifying the procedure therefor; and

(C) May contain such other terms and conditions as the parties consider appropriate;

(6) To retain agents and employees and fix their compensation;

(7) To sell and issue revenue bonds and assessment-secured bonds in order to accomplish any of the purposes of this chapter;

(8) To establish rates and charges for services of any system owned by it;

(9) To establish accounts in one (1) or more banks and to make deposits therein and withdrawals therefrom, with or without requiring bond of the depository as determined by the district;

(10) To apply for and receive any moneys or properties from public utility corporations, municipalities, and other persons and to enter into contracts and agreements in connection therewith;

(11) To invest and reinvest any of its moneys in securities as determined by the district;

(12) In the case of districts created pursuant to laws heretofore enacted, to carry out such purposes and exercise such powers as may be authorized by such laws;

(13) To take such action as may be necessary or appropriate to carry out the purposes or to exercise the powers authorized by this chapter.

History. Acts 1975, No. 490, § 6; 1979, No. 527, § 1; A.S.A. 1947, § 20-1906.

14-217-107. Rights and powers of districts pertaining to assessments, repairs, and sale of property.

(a) Any district, whether created before or after March 19, 1975, shall be governed by and shall have the rights and powers conferred by the provisions of §§ 14-92-201, 14-92-203 — 14-92-208, 14-92-210 — 14-92-232, 14-92-235 — 14-92-239 in particular §§ 14-92-201, 14-92-207, 14-92-208, 14-92-216, 14-92-221, 14-92-223 — 14-92-232, 14-92-235 — 14-92-239, as they pertain to appointment of an assessor, assessment of benefits, filing of assessments of benefits, giving of notices, reassessment of benefits, levy of assessments and taxes, payment and collection of assessments and taxes, enforcement of delinquent assessments, accrual of interest on assessments, preservation and repair of systems, and sale of property.

(b) No assessment of benefits shall be levied except with the approval of two-thirds (⅔) in assessed value, as shown by the last county assessment and the deed records in the office of the circuit clerk and ex officio recorder, of the owners of real property in the district. This approval may, however, be reflected by the petition referred to in § 14-217-105(a). Subject to such approval, nothing in this chapter shall be construed to limit the number of assessments that may be levied by a district.

(c) Any assessment of benefits imposed pursuant to this chapter, and any taxes collected thereon, may be pledged to secure the payment of assessment-secured bonds issued under this chapter or used to accomplish any of the purposes authorized by this chapter, including without limitation the operation and maintenance of any consolidated utility system.

History. Acts 1975, No. 490, § 8; A.S.A. 1947, § 20-1908.

14-217-108. Location of consolidated system.

(a) Subject to the provisions of subsection (b) of this section, any consolidated system or major facility constructed or financed under the authority of this chapter, whether constructed or financed by a district alone or in a joint or cooperative undertaking pursuant to § 14-217-106(5), may, subject to § 14-200-111, be constructed, wholly or partly, at such locations as, in the judgment of the board of commissioners, best serves the owners of real property within the district and the users of the consolidated system, whether within or without the boundaries of the district and whether within or without the municipality or the county within which the district is located.

(b) Anything contained in this chapter to the contrary notwithstanding, nothing contained herein, including, without limitation, subdivisions (3)-(5) of § 14-217-106 and subsection (a) of this section, shall be construed to authorize any district to acquire or construct any property or facility outside the boundaries of the municipality in which it is located for the operation of an electric system or any portion thereof or to enter into any lease, contract, or agreement concerning any such property or facility except for the production, generation, or bulk transmission of electricity for the use of the district.

(c) No restriction or limitation contained in this section shall be construed to reduce or take away or to restrict any district in the exercise of any power conferred upon the district by any other act or law or any judicial decree heretofore entered.

History. Acts 1975, No. 490, § 7;
A.S.A. 1947, § 20-1907

14-217-109. Payment of costs — Authority to use funds and revenues and to issue bonds.

(a) Consolidated utility districts are authorized to use any available funds and revenues to pay and provide for costs of accomplishing any of the purposes authorized by this chapter and are authorized to sell and issue bonds and to use the proceeds thereof to pay and provide for costs of accomplishing construction under this chapter, either alone or with other available funds and revenues. The amount of bonds issued shall be sufficient to pay all costs of accomplishing the construction, all costs of issuing the bonds, amounts necessary for reserves, if desirable, the amount necessary to provide for debt service on the bonds until funds for the payment thereof are available, and any other costs of whatever nature necessary or appropriate to the accomplishment of the construction.

(b)(1) Bonds issued by the district may be assessment-secured bonds. The district may pledge for the security and payment of assessment-secured bonds all or any specified portion of the uncollected assessments of benefits levied by the district. As additional security, the district may pledge for the security and payment of assessment-secured bonds all or any specified portion of the revenues including, without

limitation, lease rentals, derived or to be derived by the district from any systems owned or operated by the district.

(2) In the resolution or trust indenture authorizing or securing assessment-secured bonds, the district may provide for suspension of collection of assessments or taxes and the use of other funds or revenues for payment of such bonds, upon terms and conditions set forth in the resolution or trust indenture.

(c)(1) Bonds issued by the district may be revenue bonds. The district may pledge for the security and payment of revenue bonds all or any specified portion of the revenues including, without limitation, lease rentals derived or to be derived by the district from any systems owned or operated by the district.

(2) In this regard, but without limiting the generality of the foregoing, the district is authorized to issue revenue bonds for the purpose of financing construction of one (1) or more separate and distinct systems and to pledge to the revenue bonds, either by direct cross pledge or by pledge of surplus revenues, all or any specified portion of the revenues derived or to be derived from other systems owned or operated by the district.

(d) Subject to covenants and agreements entered into under the authority of this chapter or other laws, any district may use any of its revenues for any lawful purpose.

History. Acts 1975, No. 490, § 9; A.S.A. 1947, § 20-1909.

14-217-110. Bonds generally.

(a) Bonds of the district shall be authorized by resolution of the board of commissioners.

(b) The bonds may be coupon bonds, payable to bearer, or may be registrable as to principal only or as to principal and interest, and may be made exchangeable for bonds of another denomination, may be in such form and denominations, may have such date or dates, may be stated to mature at such time or times, may bear interest payable at such times and at such rate or rates, may be made subject to such terms of redemption in advance of maturity at such prices, and may contain such terms and conditions, all as the board shall determine.

(c) The bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to provisions as to registration as set forth above.

(d) The authorizing resolution may contain any of the terms, covenants, and conditions that are deemed desirable by the board, including, without limitation, those pertaining to the maintenance and investment of various funds and reserves, the nature and extent of the security, the issuance of additional bonds and the priority of pledges in that event, the custody and application of the proceeds of the bonds, the collection and disposition of assessments and of revenues, the investing and reinvesting in securities specified by the board) of any moneys

during periods not needed for authorized purposes, and the rights, duties, and obligations of the district, the board, and of the holders and the registered owners of the bonds.

(e) The authorizing resolution may provide for the execution of a trust indenture by the district with a bank or trust company within or without the State of Arkansas. The trust indenture may contain any terms, covenants, and conditions that are deemed desirable by the board including, without limitation, those pertaining to the maintenance and investment of various funds and reserves, the nature and extent of the security, the issuance of additional bonds and the priority of pledges in that event, the custody and application of the proceeds of the bonds, the collection and disposition of assessments and of revenues, the investing and reinvesting in securities specified by the board of any moneys during periods not needed for authorized purposes, and the rights, duties, and obligations of the board, the trustee, and the holders and registered owners of the bonds.

(f) The bonds shall be executed by the manual or facsimile signature of the chairman of the board and by the manual signature of the secretary of the board. The coupons attached to the bonds may be executed by the facsimile signature of the chairman of the board. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of the bonds or coupons, their signatures shall, nevertheless, be valid and sufficient for all purposes. The district shall adopt and use a seal in the execution and issuance of the bonds, and each bond shall be sealed with the seal of the district.

(g) The bonds may be sold for such price, including, without limitation, sale at a discount and may be sold in such manner as the district may determine.

(h) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this chapter, that the bonds are obligations only of the district, and that in no event do they constitute any indebtedness for which the faith and credit of any municipality is pledged.

(i) No member of the board of commissioners shall be personally liable on the bonds or for any damages sustained by anyone in connection with any contracts entered into in carrying out the purposes and intent of this chapter, unless he shall have acted with corrupt intent.

History. Acts 1975, No. 490, § 10; 1981, No. 425, § 43; A.S.A. 1947, § 20-1910.

14-217-111. Bonds — Mortgage lien.

(a) The resolution or trust indenture authorizing or securing any bonds issued hereunder may impose a foreclosable mortgage lien upon the system constructed in whole or in part with the proceeds thereof.

(b) The nature and extent of the mortgage lien may be controlled by the resolution or trust indenture including, without limitation, provisions pertaining to the release of all or part of the system from the mortgage lien and the priority of the mortgage lien in the event of the issuance of additional bonds.

(c) Subject to such terms, conditions, and restrictions as may be contained in the resolution or trust indenture, any holder of bonds issued under this chapter or of any coupon attached thereto may, either at law or in equity, enforce the mortgage lien and may, by proper suit, compel the performance of the duties of the officials of the district set forth in the resolution or trust indenture authorizing or securing the bonds.

History. Acts 1975, No. 490, § 9; A.S.A. 1947, § 20-1909.

14-217-112. Bonds — Default — Receiver.

(a) In the event of a default in the payment of the principal of or interest on any revenue bonds issued under this chapter, any court having jurisdiction may appoint a receiver to take charge of the system constructed, in whole or in part, with the proceeds thereof.

(b) The receiver shall have the power to operate and maintain the system and to charge and collect rates and rents sufficient to provide for the payment of the principal of and interest on the revenue bonds, after providing for the payment of any costs of receivership and operating expenses of the system, and to apply the revenues derived from the system in conformity with this chapter and the resolution or trust indenture authorizing or securing the revenue bonds.

(c) When the default has been cured, the receivership shall be ended and the system returned to the district.

(d) The relief afforded by this section, shall be construed to be in addition and supplemental to the remedies that may be afforded the trustee for the bondholders and the bondholders in the resolution or trust indenture authorizing or securing the bonds. This relief shall be so granted and administered as to accord full recognition to priority rights of bondholders as to the pledge of revenues from, and the mortgage lien on, the system as specified in and fixed by the resolutions or trust indentures authorizing or securing successive bond issues.

History. Acts 1975, No. 490, § 9; A.S.A. 1947, § 20-1909.

14-217-113. Refunding bonds.

Bonds may be issued for the purpose of refunding any bonds issued under this chapter. Refunding bonds may be either sold or delivered in exchange for the bonds being refunded. If sold, the proceeds may be either applied to payment of the bonds being refunded or deposited in trust and applied as provided by § 19-9-301.

History. Acts 1975, No. 490, § 11; A.S.A. 1947, § 20-1911.

14-217-114. Bonds — Tax exemption.

Bonds issued under the provisions of this chapter, and the interest thereon, shall be exempt from all state, county, and municipal taxes. This exemption shall include income, inheritance, and estate taxes.

History. Acts 1975, No. 490, § 12; A.S.A. 1947, § 20-1912.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Ark. Const. Amend. 57, § 1 and § 26-3-302. Arkansas Const. Amend. 57, § 1 provides that the General Assembly may classify intangible personal property for assessment at lower percentages of value than other property and may exempt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempts all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

14-217-115. Investment of public funds in bonds.

Any municipality or any board, commission, or other authority established by ordinance of any municipality, or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any municipality, or the board of trustees of any retirement system created by the General Assembly of the State of Arkansas, may, in its discretion, invest any of its funds not immediately needed for its purposes in bonds issued under the provisions of this chapter. Bonds issued under the provisions of this chapter shall be eligible to secure the deposit of public funds.

History. Acts 1975, No. 490, § 13; A.S.A. 1947, § 20-1913.

CHAPTER 218

CONSOLIDATED WATER AND LIGHT IMPROVEMENT DISTRICTS

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Publisher's Notes. As to applicability of certain laws to municipal improvement districts existing prior to July 1, 1952, see §§ 14-90-102 and 14-90-103.

Cross References. Commission for operation of light and water plants, § 14-199-401 et seq.

Hearing and establishment of municipal improvement districts, § 14-88-207.

Local government reserve funds, § 14-73-101 et seq.

Proceedings to correct errors or irregularities in formation of district, § 14-86-401 et seq.

Tort liability immunity, § 21-9-301 et seq.

Effective Dates. Acts 1927, No. 350, § 41: approved Mar. 28, 1927. Emergency clause provided: "This act, being necessary for the immediate preservation of public peace, health, and safety, by reason of the inadequacy of existing water and light plants in many cities and the great economies which can be affected in consolidating same, and in improving same after consolidation, an emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

14-218-101. Scope of chapter — Applicability of general laws.

(a) None of the provisions of this chapter shall apply to any consolidated improvement district or districts consolidated by a special act of the General Assembly.

(b) Except as otherwise provided in this chapter, the district, the board of improvement, the members thereof, the assessors, and every agent and employee of the district shall be governed by the general laws relating to improvement districts in cities and towns and shall take the oaths, make the bonds, file the reports, perform the duties, have the powers, and be subject to the limitations therein prescribed.

History. Acts 1927, No. 350, §§ 30, 39; Pope's Dig., §§ 7429, 7438; A.S.A. 1947, §§ 20-531, 20-539.

14-218-102. Purpose of districts.

Improvement districts may be established in cities of the first and second class in the manner provided in this chapter for the purpose of acquiring, taking over, consolidating, enlarging, improving, extending, repairing, and maintaining an existing waterworks plant and system and an electric light plant and system theretofore acquired or constructed by separate improvement districts in those cities.

History. Acts 1927, No. 350, § 1, Pope's Dig., § 7400; A.S.A. 1947, § 20-501.

14-218-103. Petition for establishment of district.

Whenever any ten (10) owners of real property in any city shall petition the city council to lay off and establish an improvement district embracing all of the real property in the city, the city council may, by ordinance, lay off the entire city into one (1) improvement district to be known as "Consolidated Water and Light Improvement District of the City of . . . . . .", if it finds that the acquiring and taking over of an existing waterworks plant and system theretofore acquired or constructed by an improvement district named in the petition, and the taking over and acquiring of an existing electric light plant and system theretofore acquired or constructed by an improvement district named in the petition, and the consolidation of the plants and systems, and the enlarging, extending, and repairing the existing plants and systems constitute a single improvement of a local nature beneficial to all of the real property in the city.

History. Acts 1927, No. 350, § 2; Pope's Dig., § 7401; A.S.A. 1947, § 20-502.

14-218-104. Publication of ordinance establishing district.

Within twenty (20) days after the passage of the ordinance, the clerk of the city shall publish the ordinance of the council laying off and establishing the district. The ordinance shall be published in a newspaper published in the city or town, for one (1) insertion.

History. Acts 1927, No. 350, § 3; Pope's Dig., § 7402; A.S.A. 1947, § 20-503.

14-218-105. Hearing on petition — Notice — Review.

(a) Before passing the ordinance, the city council shall cause the city clerk to give notice by publication one (1) time a week for two (2) weeks in a newspaper published in the county in which the city may lie, advising the property owners within the proposed district that on a day therein named, the council will hear the petition and determine whether those signing the petition are actually owners of real property in such city.

(b) At the meeting named in the notice, the owners of real property within such city shall be heard before the council, which shall determine whether ten (10) persons who actually own real property within the limits of the city actually signed the petition.

(c) The finding of the council shall be conclusive unless within thirty (30) days thereafter suit is brought to review its action in the chancery court of the county where the city lies.

History. Acts 1927, No. 350, § 4; Pope's Dig., § 7403; A.S.A. 1947, § 20-504.

Cross References. Notice on formation of improvement districts, § 14-86-301 et seq.

14-218-106. Petition to take over light and water plant.

(a) If, within ninety (90) days after the publication of the ordinance creating and establishing the district, persons claiming to be a majority in value of the owners of real property within the district shall present to the city council a petition that the plants and systems be acquired and consolidated, that the improvements be made, that thereafter the plants and systems be maintained, and that the cost thereof be assessed and charged upon the real property situated within the district, the city clerk shall give notice by publication one (1) time a week for two (2) weeks in a newspaper published in the county in which the city lies. This publication shall advise the property owners within the district that on a day therein named the council will hear the petition and determine whether those signing the petition constitute a majority in value of the owners of real property.

(b) At the meeting named in the notice, the owners of real property within the district shall be heard before the council, which shall determine whether the signers of the petition constitute a majority in value. The findings of the council shall be conclusive unless within

thirty (30) days thereafter suit is brought to review its action in the chancery court of the county where the city lies.

(c) In ascertaining whether the petition purporting to be signed by a majority in value of the owners of real property in the district is actually so signed, council and courts shall take and be governed by the valuation placed upon the property as shown by the last county assessment on file in the county clerk's office.

(d) The petition provided for in this section may be in the following form:

> "We, the undersigned, being a majority in value of the owners of real property in consolidated Water and Light District of the city of ....., hereby petition your honorable body that said consolidated district proceed to acquire the existing water plant and systems heretofore constructed or acquired by Water Improvement District No..... of said city, and also to acquire the existing Light Plant and System heretofore constructed or acquired by Light Improvement District No..... of said City, and that said consolidated district proceed from time to time to enlarge, improve, extend, repair and maintain said consolidated plants and systems, and that the cost thereof be assessed and charged upon the real property within said consolidated district. We expressly consent that whenever the limits of the city of ..... are extended that any part of the new territory embraced in said new limits may be annexed to this consolidated district upon the petition of a majority in value of the owners of real property in the territory proposed to be annexed to this district."

History. Acts 1927, No. 350, §§ 5, 33; Pope's Dig., §§ 7404, 7432; A.S.A. 1947, §§ 20-505, 20-506.

14-218-107. Appointment of board of improvement — Oath.

(a) If the city council shall determine after notice and hearing, as provided in § 14-218-106, that the signers of the petition constitute a majority in value of the owners of real property in the district, then the city council shall at once appoint three (3) persons owners of real property therein, who shall compose a board of improvement for the district.

(b) Before entering upon his duties, each member of the board shall take the oath of office required by Arkansas Constitution, Article 19, § 20, and take an oath that he will not either directly or indirectly be interested in any contract made by the board. The oath shall be filed in the office of the city clerk.

History. Acts 1927, No. 350, §§ 6, 7; Pope's Dig., §§ 7405, 7406; A.S.A. 1947, §§ 20-507, 20-508.

14-218-108. Plans for improvements.

(a)(1) After their qualification, the board shall form plans for the improvements within the consolidated district.

(2) These plans shall include the existing water plant and system and the existing light plant and system owned and constructed by the separate water and light districts. The plans shall also include such additions, extensions, enlargements, improvements, repairs, and replacements thereof and thereto which the board may determine upon.

(3) As soon as the plans shall have been determined upon, the board shall file a copy of the plans and an estimate of the cost thereof with the city council. The copy of plans so filed shall show the character and extent of the plans and systems acquired or constructed by the separate light and water districts, as well as all new proposed improvements to be made for the purpose of consolidating the operation of the plants and all other new proposed improvements and extensions to the existing plants and systems. This copy shall also show the location of all water mains including such extensions and new mains as are proposed and shall show the location of all electric light and power lines including such extensions and new lines as are proposed.

(4) The estimate of the cost shall include all sums required to pay for the existing system as well as the cost of new improvements and extensions.

(b) At any time after the filing of the original plans provided for in this section, the board of improvement of such a consolidated district may, upon the request of the city council of the city in which such district is located, form additional plans for new improvements, extensions, repairs, or replacements to the consolidated water and electric light plant and system. A copy of the plans and of the estimated cost thereof shall be filed with the city council.

History. Acts 1927, No. 350, §§ 8, 23; Pope's Dig., §§ 7407, 7422; A.S.A. 1947, §§ 20-509, 20-524.

14-218-109. Appointment of assessors — Oath — Compensation.

(a) As soon as the board of improvement shall have filed the plans and the estimated cost of the improvement, the city council shall appoint three (3) electors of the city who shall constitute a board of assessment of the benefits to be received by each lot or block, or other subdivision of land within the district, by reason of the proposed local improvement.

(b) Each assessor shall, before entering upon the discharge of his duties, take oath that he will and truly assess, to the best of his knowledge and ability, the value of all the benefits to be received by each landowner by reason of the proposed improvements as affecting each of the lots, blocks, or parcels of land, or railway tracks and rights-of-way within the district.

(c) The members of the board of assessment shall each receive five dollars ($5.00) a day during the time that they shall be actually engaged in performing the duties prescribed in this chapter, to be paid out of the funds collected by taxation for such local improvement.

History. Acts 1927, No. 350, §§ 9, 10, 14; Pope's Dig., §§ 7408, 7409, 7413; A.S.A. 1947, §§ 20-510, 20-511, 20-515.

14-218-110. Assessments and corrections.

(a) The assessors shall at once proceed to inscribe in a book to be used for that purpose the description of each of the lots, blocks, or parcels of land, and railroad tracks and rights-of-way and shall assess the value of the benefit to accrue to each of the lots, blocks, or parcels of land, and railroad tracks and rights-of-way by reason of such improvement, which assessment of benefits they shall enter upon the book opposite the description thereof.

(b) They shall then subscribe the assessment and deposit it in the office of the city clerk, where it shall be kept and preserved as a public record.

(c) The assessment may be annually readjusted as provided in this chapter.

(d)(1) The assessors, or their successors, or a majority of them, may file with the city clerk their certificate correcting erroneous descriptions of the lots, blocks, and rights-of-way, or describing the lots, blocks and rights-of-way where the description was in the original assessment defective or wholly or partly omitted.

(2) Upon the filing of the certificate, the city clerk shall extend or set out in the book the corrected or supplied descriptions, and the descriptions shall relate back to the filing of the assessment in the first instance and shall have the same force and effect as if correctly assessed and described and filed at that time.

History. Acts 1927, No. 350, § 10; Pope's Dig., § 7409; A.S.A. 1947, § 20-511.

Cross References. Assessments not to be reduced after issuance of bonds, § 14-86-602.

Partition of assessments among several owners of single tract, § 14-86-601.

14-218-111. Notice of filing of assessments.

Immediately on filing of the assessment, the city clerk shall insert the following notice in a newspaper published in the county in which the city lies:

"The assessment of consolidated water and light district of ..... was filed in my office on the ..... day of ....., 19 ...., and the assessment is now subject to inspection.

.....
Clerk of the City of ....."

History. Acts 1927, No. 350, § 11; Pope's Dig., § 7410; A.S.A. 1947, § 20-512.

14-218-112. Appeal from assessment.

(a) At any time within ten (10) days from the giving of the notice, anyone whose real estate is embraced in the assessment may file with the city clerk, in writing, his notice of appeal from the action of the board in making the assessment of his property.

(b) The appeal shall be heard and disposed of at the next regular meeting of the city council, and, on such appeal, the matter shall be heard de novo on such evidence as may be adduced on either side.

(c) The city council shall enter on its minutes the result of its finding on the appeal and shall then cause a copy of its finding to be certified to the board of assessors.

(d) The board shall make its assessment conform thereto if any change has been made therein by the city council.

History. Acts 1927, No. 350, §§ 12, 13; Pope's Dig., §§ 7411, 7412; A.S.A. 1947, §§ 20-513, 20-514.

14-218-113. Payment of assessments.

(a) It shall be provided by ordinance that the local assessment of benefits shall be paid in successive annual installments so that no annual installment shall in any one (1) year exceed twelve and one-half percent (12½%) of the assessed benefits accruing to the real property.

(b) The ordinance shall fix the day in each year when the local assessments of the year shall be paid.

History. Acts 1927, No. 350, § 15; Pope's Dig., § 7414; A.S.A. 1947, § 20-516.

14-218-114. Form of assessment ordinance — Lien on real property.

(a) The ordinance may be in the following form:

"Whereas the majority in value of the property holders owning property adjoining the locality to be affected and situated in Consolidated Water & Light District of ...., organized pursuant to Act No. .... of the Acts of 1927, have petitioned the council of the city of ..... to acquire and construct the improvements as in said act provided, and that the cost thereof shall be assessed upon the real property of said district according to the benefits received; and

"Whereas, said benefits received by each and every block, lot, and parcel of real property situated in said district equals or exceeds the local assessment thereon; and

"Whereas, the estimated cost of said improvement is ..... dollars;

"Therefore it is now ordained by the City Council of the City of ... that said several blocks, lots, and parcels of real property in said district be assessed according to the assessment list for said improvement district as the same now remains in the office of the city clerk, and that ..... per cent on each of said blocks, lots, and parcels shall be paid annually on or before the .... day of .... until the whole of said local assessment shall be paid."

(b)(1) The local assessment shall be a charge and lien against all the real property in the district from the date of the ordinance.

(2) The lien shall be entitled to preference over all judgments, executions, encumbrances, or liens whensoever created and shall continue until such local assessment, with any penalty and costs that may accrue thereon, shall be paid.

(3) As between grantor and grantee, all payments not due at the date of the transfer of the real property shall be payable by the grantee.

History. Acts 1927, No. 350, § 16; Pope's Dig., § 7415; A.S.A. 1947, § 20-517.

14-218-115. Publication of assessment ordinance — Statute of limitations for challenging assessments.

(a) Within thirty (30) days after the passage of the ordinance mentioned in § 14-218-114, the city clerk shall publish a copy of it in a newspaper published in the town or city.

(b) All persons who shall fail to begin legal proceedings within thirty (30) days after such publication, for the purpose of correcting or invalidating such assessment, shall be forever barred and precluded.

History. Acts 1927, No. 350, § 17; Pope's Dig., § 7416; A.S.A. 1947, § 20-518.

CASE NOTES

Estoppel.

Where owners of property within the district paid assessments as they accrued for a period of 10 years, bonds were sold, and improvements made, attack on the formation of the district and the assessment against their property in suit against them for collection of delinquent assessments was purely collateral, and owners were estopped to question the validity of the assessments. Beloate v. Street Imp. Dist., 203 Ark. 899, 159 S.W.2d 451 (1942).

14-218-116. Copy of assessment delivered to collector — Warrant for collection.

(a) Within forty (40) days after the passage of the ordinance, unless the time is extended by the city council, the city clerk shall deliver to the city collector a copy of the assessment of benefits, containing a description of the blocks, lots, and parcels of land in the district and the amount assessed on each, duly extended against each lot, block, or

parcel of land. The clerk shall deliver it with his warrant attached thereto to the city collector.

(b) The warrant may be in the following form:

"State of Arkansas,

ss

City of .....

To the Collector of said City of .....:

You are hereby commanded to collect from the owners of real property described in the annexed copy of Ordinance No. ..... the assessments of the same and as extended thereon for the current year and to pay same to the treasurer of the Consolidated Water and Light District of said City within sixty days from this date.

Witness my hand and seal of office on this ..... day of ....., 19....."

(c) Similar writs shall be issued annually until the local assessment shall be fully paid.

History. Acts 1927, No. 350, § 18; Pope's Dig., § 7417; A.S.A. 1947, § 20-519.

14-218-117. Collector's notice — Publication.

The collector shall immediately, upon the receipt of the tax list, cause to be published in a newspaper published in the city a notice, which may be in the following form:

"The tax books for the collection of the special assessment upon the real property in Consolidated Water & Light District of ..... has been placed in my hands. All owners of real property lying in the district are required to pay their assessment to me within thirty (30) days from this date. If such payment is not made, action will be commenced at the end of that time for the collection of said assessment and for legal penalties and costs.

Given under my hand this ..... day of ....., 19.....

..... Collector."

History. Acts 1927, No. 350, § 19; Pope's Dig., § 7418; A.S.A. 1947, § 20-520.

14-218-118. School property subject to assessment.

The property of the public school districts within the limits of a district shall be subject to assessment for the local improvements made by a consolidated district beneficial thereto. The president or secretary of the district may sign the petition for making of the improvements, when authorized by the board of directors.

History. Acts 1927, No. 350, § 31; Pope's Dig., § 7430; A.S.A. 1947, § 20-532.

14-218-119. Vesting of title in consolidated district — Liability of separate districts.

(a) As soon as the ordinance levying the assessment is passed, the title to the water system and plant, the title to the electric light system and plant theretofore acquired or constructed by separate water and light districts in the city, and the title to all other property of every kind and wherever situate owned by the separate districts shall vest in the consolidated district.

(b) The consolidated district shall be and become liable for all legal debts contracted by either of the separate districts and shall be obligated to pay them as they fall due.

(c)(1) All valid mortgages, pledges, or liens made or given by the separate districts shall continue and remain in full force and effect until the debts which they secure have been paid and discharged.

(2) The separate districts shall remain severally liable, so far as their creditors are concerned, for all debts contracted by them until the debts shall have been discharged.

(d) As to the creditors of the separate districts, nothing in this chapter shall affect any uncollected assessments of the separate districts or the lien thereof until the respective debts of the districts have been paid in full.

(e) After the passage of the ordinance levying the assessments for the consolidated district, the assessments theretofore levied by the separate districts shall cease to be a lien as between grantor and grantee of real property located in the separate district.

History. Acts 1927, No. 350, § 20; Pope's Dig., § 7419; A.S.A. 1947, § 20-521.

14-218-120. Conveyance of property to consolidated district.

(a) Upon the passage of the ordinance levying the assessment of the consolidated district, it shall be the duty of the board of improvement of the separate water district and the duty of the board of improvement of the separate light district in the city to execute and deliver proper conveyances of all property owned by them respectively to the consolidated district.

(b) These conveyances shall recite on their face that they are made subject to any valid incumbrance on the property conveyed and that the consideration for the conveyance is the obligation and agreement of the consolidated district to pay all valid debts of the conveying districts.

(c) These instruments shall be acknowledged and recorded.

History. Acts 1927, No. 350, § 21, Pope's Dig., § 7420; A.S.A. 1947, § 20-522.

14-218-121. Retirement of bonds of separate districts before maturity.

(a) The board of improvement of the consolidated district is authorized to pay any notes or bonds given by either of the separate districts before the notes or bonds become due including accrued interest on the notes or bonds up until the date of payment.

(b) In order to facilitate the retirement of the notes or bonds, the board at its option, may pay, in addition to the face value and accrued interest on any bond or note, a premium of not exceeding one-half of one percent (½ of 1%) for each full year that the payment of the note or bond is anticipated.

History. Acts 1927, No. 350, § 22; Pope's Dig., § 7421, A.S.A. 1947, § 20-523.

14-218-122. Annual revision of assessments.

(a) The board of assessors of a consolidated district shall annually revise and readjust the assessment of property made by them for the district.

(b) The annual readjustment shall be made, and the list showing it filed with the city clerk at least ninety (90) days before the date fixed by the city council of the city for the collection of the annual installments of the assessments of the district.

(c)(1) In making the annual revision and readjustment, the board of assessors shall have no power to increase the assessment or make any new assessment against any tract of land except to cover the increased value by reason of improvements actually placed on the land since the making of the first assessment or the last annual readjustment thereof, or to cover the increased or new benefits derived by any property by reason of new improvements, extensions, repairs, or replacements to the consolidated system made, or to be made, in accordance with additional plans filed as provided in § 14-218-108(b).

(2) The aggregate amount of the assessed benefits of all property in such districts, as shown by the assessment originally made, shall not be diminished by any readjustment or revision.

(d) The failure of the assessors of the districts to revise and readjust annually the assessment of the districts shall not invalidate or affect in any way the original assessment.

(e) At the time of making the annual readjustment and revision, the board of assessors may correct and amend the description of any property improperly described in the original assessment, or any previous revision thereof.

History. Acts 1927, No. 350, § 24; Pope's Dig., § 7423; A.S.A. 1947, § 20-525.

Cross References. Assessments not to be reduced after issuance of bonds, § 14-86-602.

14-218-123. Revised assessment list filed with city clerk — Notice.

(a) Immediately after making the annual readjustment and revision, the board of assessors shall file with the city clerk a list of the tracts, lots, and parcels of land upon which the assessment has been charged by them. This list shall show the name of the owner of each tract, lot, and parcel of land and the value of the benefits to accrue to each of the tracts as fixed by them at the annual readjustment.

(b) The clerk shall insert in a newspaper published in the county in which the city is located the following notice:

"The list showing the annual readjustment of the assessment of the Consolidated Water & Light District ...., was filed in my office on the .... day of ...., 19.....

..... Clerk."

History. Acts 1927, No. 350, § 25; Pope's Dig., § 7424; A.S.A. 1947, § 20-526.

14-218-124. Appeal from reassessment.

(a) Any owner of real estate located in the district, at any time within five (5) days from the giving of the notice, may appeal from the action of the board of assessors in readjusting or refusing to readjust the assessment against his property by filing with the clerk, in writing, his notice of appeal from the action of the board of assessors.

(b) The appeal shall be heard and disposed of at the next meeting of the city council.

(c) The city council shall enter upon its minutes the result of its findings on the appeal and shall have a copy of its findings certified to the board of assessors who shall make their assessment conform thereto if any change has been made therein by the council.

(d) Any person who shall fail to begin legal proceedings for the purpose of correcting or invalidating the readjustment or any new assessment against his property within thirty (30) days from the publication of the notice provided for in § 14-218-123 shall be forever barred and precluded.

History. Acts 1927, No. 350, § 26; Pope's Dig., § 7425; A.S.A. 1947, § 20-527.

14-218-125. Computation of tax upon reassessment.

The annual tax or installment shall be computed and extended upon the assessment as readjusted and revised as hereinbefore provided by the clerk without further ordinance or levy by the council.

History. Acts 1927, No. 350, § 27; Pope's Dig., § 7426; A.S.A. 1947, § 20-528.

14-218-126. Delinquency.

(a) If any assessment made under this chapter shall not be paid within the time mentioned in the notice published by the collector, the collector shall add thereto a penalty of twenty percent (20%) and shall at once return a list of the property on which the assessments have not been paid to the board of improvement as delinquent.

(b)(1) The board shall thereupon proceed to collect the delinquent assessments by filing a complaint in equity in the court having jurisdiction of suits for the enforcement of liens upon real property.

(2) The pleadings, service, right and time of redemption, time and manner of taking appeal, and all procedure, both in the lower court and on appeal, shall be governed by the general statutes providing for such suits by improvement districts in cities and towns.

History. Acts 1927, No. 350, §§ 28, 29; Pope's Dig., §§ 7427, 7428; A.S.A. 1947, §§ 20-529, 20-530.

Cross References. Remission of delinquent penalties in excess of 10 percent, § 14-86-1002.

Right of redemption, § 14-86-1501 et seq.

Suits for collection of delinquent taxes, § 14-90-1001 et seq.

CASE NOTES

Complaint.

A complaint in equity is required to be filed by the board of improvement in the court having jurisdiction of suits for the enforcement of liens upon real property for the condemnation and sale of delinquent property for the nonpayment of the assessment, and the owner of the property assessed shall be made a defendant, if known, and if unknown, that fact shall be stated in the complaint and the suit shall proceed as a proceeding in rem against the party assessed. Hudgins v. Schultice, 118 Ark. 139, 175 S.W. 526 (1915).

14-218-127. Operation of plants by city — Use of income.

(a) The city in which the consolidated district is located, through its proper officers, shall have full power and authority to operate the consolidated plant and system acquired and improved by the consolidated district instead of the board of improvement of the consolidated district.

(b) The city may supply water, light, and power to private consumers and make and collect proper charges for such service; the gross income derived therefrom shall be first devoted by the city to the payment of operating expenses.

(c) The income derived from the operation after paying operating expenses shall be annually paid by the city to the board of improvement.

(d) So much of the amount so received by the board of improvement as may be necessary for the purpose shall be used by the board of

improvement for the maintenance and improvement of the consolidated system. Any balance not so expended may be used by the board of improvement in paying indebtedness theretofore incurred by the consolidated district.

(e) None of the provisions of this section shall apply to any consolidated improvement district or districts consolidated by a special act of the General Assembly.

History. Acts 1927, No. 350, § 30; Pope's Dig., § 7429; A.S.A. 1947, § 20-531.

14-218-128. Use of funds for improvements outside city.

It shall be lawful for money raised by assessment in the district to be expended in the purchase of lands or erection of houses, reservoirs, or other improvements outside of the limits of the city in which the district is located, which may be necessary for the proper construction and operation of the waterworks and electric light plant.

History. Acts 1927, No. 350, § 32; Pope's Dig., § 7431; A.S.A. 1947, § 20-533.

14-218-129. Powers of board concerning improvements.

(a) The board of improvement shall have control of the construction of improvements of the district.

(b) The board may:

(1) Advertise for proposals for doing any work by contracts and may accept or reject any proposals;

(2) Appoint all necessary agents and engineers for carrying on the work and making plans herein provided and may fix their pay;

(3) Buy all necessary material and implements;

(4) Sell any such material or implements as may be on hand and which may not be necessary for the completion of the improvement under way or which may have been completed; and

(5) In general, make all contracts in the prosecution of the work as may best subserve the public interest.

History. Acts 1927, No. 350, §§ 34, 35; Pope's Dig., §§ 7433, 7434; A.S.A. 1947, §§ 20-534, 20-535.

14-218-130. Contractors' bonds.

All contractors shall be required to give bond for the faithful performance of such contracts as may be awarded them, with good and sufficient securities, in an amount equal to the amount of the contract work. The board shall not remit or excuse the penalty or forfeiture of the bond or the breaches thereof.

History. Acts 1927, No. 350, § 35; Pope's Dig., § 7434; A.S.A. 1947, § 20-535.

Cross References. Public contractors' bonds, § 22-9-401 et seq.

14-218-131. Bonds — Issuance.

(a) In order to hasten the work provided for in the original or any additional or supplementary plans and to pay the indebtedness owed by any separate district whose plant or system is acquired by such consolidated district, the board may borrow money at a rate or rates of interest as provided by the resolution authorizing issuance of bonds.

(b) In order to carry out any of the above purposes, the board may sell bonds which may be secured by a mortgage of uncollected assessments or a part of same and by a mortgage on the consolidated plant and system. The sale of all bonds shall be at public auction after notice of such sale has been published one (1) time a week for two (2) weeks in some newspaper published and having a bona fide circulation in the county in which the district is located.

(c) Mortgages given by the board shall have priority in the order of their recording.

(d) The total outstanding indebtedness of the district, excluding interest, shall never exceed fifty percent (50%) of the assessed value of the real estate in the district, as shown by the last county assessment.

History. Acts 1927, No. 350, § 36; Pope's Dig., § 7435; Acts 1981, No. 425, § 30; A.S.A. 1947, § 20-536.

Cross References. Financing of electric facilities by improvement districts, § 14-216-101.

14-218-132. Additional assessments.

(a) If the assessment first levied shall be insufficient to complete the improvement and pay the debts of the district, additional assessments may be levied and collected from time to time.

(b)(1) The total assessment against any piece of property shall never exceed the benefits received by it.

(2) The total assessments collected from all the property in the district under the provisions of this chapter shall not exceed fifty (50) percent of the assessed value of all property in the district for state and county purposes, according to the assessment list on file at the time of the publication of the ordinance creating the district.

History. Acts 1927, No. 350, § 37; Pope's Dig., § 7436; A.S.A. 1947, § 20-537.

14-218-133. Eminent domain.

(a) The right of eminent domain is conferred upon any consolidated district for the purpose of securing any lands or rights-of-way needed in making an improvement.

(b) Suits brought by the board for condemnation of lands or rights-of-way shall be deemed cases of public interest and shall be advanced both by the circuit courts and Supreme Court.

(c) Upon the filing of a condemnation suit in the circuit court, the court or judge in vacation may designate an amount of money to be deposited by the district subject to the order of the court and for the purpose of making compensation when the amount thereof shall have been assessed at the trial of the cause, and the court or judge in vacation shall designate the place of the deposit.

(d) Whenever the deposits shall have been made in compliance with order of the court or judge, it shall be lawful for the district to enter upon the land and proceed with their work prior to the assessment and payment of damages for the use and right to be determined in the suit.

History. Acts 1927, No. 350, § 38; Pope's Dig., § 7437; A.S.A. 1947, § 20-538.

CHAPTER 219

LEASE OR SALE OF UTILITY PLANTS

SECTION.
14-219-101. Lease.
14-219-102. Sale.
14-219-103. Payment — Bond.
14-219-104. Deed of conveyance — Sale of all property — Satisfaction of lien.
14-219-105. Use of initial payment.

Effective Dates. Acts 1923, No. 322, § 6: approved Mar. 6, 1923. Emergency clause provided: "All laws or parts of laws in conflict herewith be and the same are hereby repealed, and this act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage."

Acts 1927, No. 349, § 2: approved Mar. 28, 1927. Emergency clause provided: "This act being necessary to the public welfare, an emergency is hereby declared to exist and this act to take effect from and after its passage."

CASE NOTES

Conflicts of Interest.

It is against public policy for the officers of a municipal corporation to lease or sell waterworks or light plants to themselves. Rogers v. Sangster, 180 Ark. 907, 23 S.W.2d 613 (1930).

14-219-101. Lease.

(a) The board of commissioners of any improvement district, operating a system of waterworks, gas plants, or electric plants belonging to and owned by any improvement district, may lease the system of waterworks, gas plants, or electric plants for such period of time and upon such terms and conditions as the board of commissioners may deem for the best interest of the district.

(b) The lessees shall be required to maintain, keep in repair, and return the plant to the district in as good condition as when received, ordinary wear and tear excepted, but the maintenance contemplated shall permit more modern or suitable machinery or equipment, equally as efficient to perform the service required, to be installed in place of machinery or equipment then in use.

(c) No lease shall be made except to persons, firms, or corporations holding a franchise to operate a system of waterworks, gas plants, or electric plants in the city or town in which the plant or system to be leased is situated.

(d) No plant shall be taken over for operation under the provisions hereof unless and until the lessee files with the district an approved bond, in such sum as the board of commissioners may require, for the faithful fulfillment of the terms of the lease.

History. Acts 1923, No. 322, § 1; Pope's Dig., § 7390; A.S.A. 1947, § 19-3906.

Cross References. Self-insured fidelity bond programs, § 21-2-701 et seq.

CASE NOTES

Municipalities.

A city has no authority under this section to lease a waterworks and electric light plant owned by improvement districts although operated by the city. Rogers v. Sangster, 180 Ark. 907, 23 S.W.2d 613 (1930).

Cited: Ogan v. Jackson, 175 Ark. 820, 300 S.W. 446 (1927); Gantt v. Arkansas Power & Light Co., 194 Ark. 925, 109 S.W.2d 1251 (1937).

14-219-102. Sale.

(a) The board of commissioners of any improvement district owning a system of waterworks, gas plants, or electric plants may sell the system or any of them, together with the right to operate them, when they shall determine by resolution adopted by a majority vote of the board that it would be for the best interest of the district that the sale be consummated.

(b)(1) Before any sale shall be consummated, there shall be filed within one (1) year after the adoption of the resolution, with the board of commissioners of the improvement district, a petition, signed by a majority in value as shown by the last county assessment of the owners of real property within the improvement district proposing to make the sale, asking that such sale be made and stating the minimum price at which such sale shall be made. In no event shall the minimum price be

a sum less than the amount necessary to pay all the outstanding secured indebtedness against the plant or system.

(2) Upon the filing of this petition, the board of commissioners shall give notice, by publication one (1) time a week for two (2) weeks in a newspaper published in the county in which the improvement district may lie, advising the owners of real property within the improvement district that on a day therein named the board of commissioners of the improvement district will hear the petition and determine whether those signing the petition constitute a majority in value of such owners of real property.

(3) At the meeting named in the notice, the owners of real property within the improvement district shall be heard before the board of commissioners, which shall determine whether the signers of the petition constitute a majority in value. The finding of the board of commissioners shall be conclusive, unless within thirty (30) days thereafter suit is brought to review its action in the chancery court of the county in which the improvement district lies.

(4) In determining whether those signing the petition constitute a majority in value of the owners of the real property within the improvement district, the board of commissioners and the chancery court shall be guided by the records of deeds in the office of the recorder of the county and shall not consider any unrecorded instrument.

History. Acts 1923, No. 322, § 2; Pope's Dig., § 7391; A.S.A. 1947, § 19-3907.

14-219-103. Payment — Bond.

(a) Where the sale price is an amount greater than the outstanding secured indebtedness of the district, at least the excess over the amount of the secured indebtedness shall be paid in cash.

(b)(1) All deferred payments, if any, shall be secured by a bond for one and one-half (1½) times the total amount of the deferred payments, which bond shall be for the maintenance of the plant or system during the time of any outstanding secured indebtedness and for the prompt payment of any interest or principal on any secured indebtedness as and when it shall fall due.

(2) The bond shall be further conditioned that the purchaser will maintain insurance upon the plant for an amount to be agreed upon, with a "loss payable" clause for the benefit of the district making the sale as its interest may appear.

(3) The bond herein provided for shall be approved by the board of commissioners.

(4) The bond provided for in this section and § 14-219-101 shall be made by a corporate surety company authorized to do business in the State of Arkansas.

History. Acts 1923, No. 322, § 3; Pope's Dig., § 7392; A.S.A. 1947, § 19-3908.

14-219-104. Deed of conveyance — Sale of all property — Satisfaction of lien.

(a) The transfer of property under this chapter shall be evidenced by a deed of conveyance in the usual form and with the usual covenants or warranty. However, a lien against the property sold shall be retained in the deed for all of the unpaid sale price with the right, upon default of payment of any interest or indebtedness when it falls due, to declare all of the unpaid sale price due and payable and to proceed to a foreclosure. The deed of conveyance shall be executed on behalf of any improvement district by the chairman and secretary of the board of commissioners.

(b) A receipt duly executed by a majority of the board of commissioners of an improvement district shall release the purchaser from further liability for the payment of the amount recited in the receipt.

(c) The sale of all the property of an improvement district shall not work a forfeiture of the corporate entity of the district until all of the secured indebtedness of the district shall have been paid.

(d) Upon the payment of all indebtedness for which a lien may be retained in the deed of conveyance, the chairman and secretary of the board of commissioners of an improvement district are authorized and directed to satisfy the lien by a deed or release, or by marginal entry upon the deed records where it may be recorded.

History. Acts 1923, No. 322, § 4, Pope's Dig., § 7393; A.S.A. 1947, § 19-3909.

14-219-105. Use of initial payment.

The proceeds of any initial cash payment from the sale of any plant or system of any improvement district shall be applied first to the payment of all unsecured debts outstanding against the district on account of the plant or system. The remainder shall be, by the commissioners, placed in the treasury of the city or town wherein such plant or system is located to become a part of the general fund of the city or town.

History. Acts 1923, No. 322, § 5; 1927, No. 349, § 1; Pope's Dig., §§ 7394, 10046; A.S.A. 1947, § 19-3910.

CASE NOTES

In General.

Prior to the 1927 amendment, profits from the sale of waterworks would go to property owners of the district. Ogan v. Jackson, 175 Ark. 820, 300 S.W. 446 (1927).

CHAPTERS 220-228

[Reserved]

SUBTITLE 14. SOLID WASTE DISPOSAL, WATERWORKS, AND SEWERS GENERALLY

CHAPTER 229

GENERAL PROVISIONS

SECTION.
14-229-101. Individual Sewage Disposal Systems Advisory Committee — Creation — Members.
14-229-102. Individual Sewage Disposal Systems Advisory Committee — Powers and duties.
14-229-103. Termination of water service.

A.C.R.C. Notes. Acts 1987, No. 82, §§ 1, 2, provided that any city or county is prohibited from disposing solid waste in a county having a population between 26,900 and 27,400 according to the 1980 decennial federal census without prior approval of the quorum court of the receiving county.

Effective Dates. Acts 1983, No. 708, § 3: Mar. 23, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to the types of soil in various areas of this State, individual sewage disposal systems adaptable to the soil of a certain area will not work satisfactorily in the soil of another area; that the future growth and expansion of the State is dependent upon the development of the necessary technology to provide a variety of individual sewage disposal systems adaptable to meet the different soil conditions that exist throughout the State; that the establishment of an Advisory Committee on Individual Sewage Disposal Systems is necessary to establish technical advice and assistance to the Division of Sanitarian Services of the Department of Health, and additional funds must be provided to enable the Division to offer leadership and technical assistance to encourage individual property owners to install sewage disposal systems that the Division has approved as being adaptable to the areas in which they are to be located; and that the immediate passage of this Act is necessary to accomplish such purpose. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997 Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governer [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

ALR. Validity of local regulation of hazardous waste. 67 ALR 4th 822.

Am. Jur. 15A Am. Jur. 2d, Commerce, § 89.

16 Am. Jur. 2d, Con. Law, § 292.

Am. Jur. 2d, Mun. Corp., § 569 et seq.

61A Am. Jur. 2d, Poll. Con., §§ 47, 244 et seq.

14-229-101. Individual Sewage Disposal Systems Advisory Committee — Creation — Members.

(a) There is established an advisory committee, to be known as the "Individual Sewage Disposal Systems Advisory Committee", for the purpose of making recommendations, advising, and providing assistance to the Program Administrator of the Environmental Program Section of the Division of Environmental Health Protection of the Department of Health concerning the utilization and application of alternate and experimental individual sewage disposal systems.

(b) The advisory committee shall consist of twelve (12) members, to be appointed as follows:

(1) A member of the Arkansas Home Builders Association, to be appointed by the president of the association;

(2) A member of the Arkansas Real Estate Commission, to be appointed by a majority vote of the commission;

(3) A member of the Arkansas Realtors Association, to be appointed by the president of the association;

(4) One (1) member who shall be a currently serving or former member of the board of a suburban improvement district or an officer or member of an association of property owners created by and pursuant to state law and organized for the purpose of maintaining common facilities, including sewage disposal facilities, in unincorporated subdivisions in this state, to be named by the Governor. However, in making the appointment, the Governor shall name a person who has been a developer or a member or officer of the board of a development company that has developed large unincorporated subdivisions in two (2) or more counties in this state;

(5) Two (2) members of the Septic Tank Research Program of the University of Arkansas, to be named by the President of the University of Arkansas;

(6) The Director of the Division of Engineering, Department of Health;

(7) The Program Administrator of the Environmental Program Section, Division of Environmental Health Protection, Department of Health;

(8) The Director of the Division of Environmental Health Protection, Department of Health;

(9) The Director of the Arkansas Department of Pollution Control and Ecology or his designee;

(10) The State Conservationist of the United States Department of Agriculture Soil Conservation Service or his designee; and

(11) The State Geologist with the Arkansas Geological Commission or his designee.

(c)(1) The six (6) members of the advisory committee appointed to serve thereon in the manner set forth in subdivisions (b)(1) through (b)(5) of this section shall be appointed for terms of four (4) years.

(2) A vacancy in the term of any member due to death, resignation, or other cause shall be filled in the manner provided in this section for the original appointment for the unexpired portion of the term.

(d) Members of the advisory committee shall serve without pay but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(e)(1) The advisory committee shall elect from its membership a chairman, a vice chairman, and a secretary-treasurer, who shall each serve a term of one (1) year. Officers shall be eligible for election to succeed themselves.

(2) The committee shall establish its own rules of procedure.

(3) The committee shall meet upon call by the chairman, or at the request of any five (5) members of the committee stated in writing, or at the request of the Director of the Division of Environmental Health Protection of the Department of Health, or upon call by the Director of the Department of Health.

History. Acts 1983, No. 708, § 1; A.S.A. 1947, § 19-5415; Acts 1991, No. 185, § 1; 1993, No. 129, § 1; 1993, No. 145, § 1; 1997, No. 250, § 89.

A.C.R.C. Notes. As originally amended by Acts 1993, No. 129, § 1, subdivision (c)(1) also provided that the six (6) members of the advisory committee "shall, at the first meeting of the committee, determine their respective terms by lot in such manner that the terms of three (3) members shall be for a term of two (2) years and the terms of the other three (3) members shall be for a term of four (4) years. Their successors shall be appointed for terms of four (4) years."

Acts 1997, No. 1219, § 2, provided: "'Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality'. (a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

Amendments. The 1993 amendment substituted "Program Administrator of the Environmental Program Section of the Division of Environmental Protection" for "Division of Sanitarian Services" in (a); substituted "the Environmental Program Section, Division of Environmental Health Protection" for "General Sanitation, Division of Sanitarian Services" in (b)(7); substituted "Environmental Health Protection" for "Division of Sanitarian Services" in (b)(8); substituted "State Conservationist of the United States Department of Agriculture Soil Conservation Service" for "Director of the Arkansas Soil and Water Conservation Commission" in (b)(10); substituted "A vacancy" for "Vacancies" at the beginning of (c)(2); made a minor punctuation change in (d); and substituted "Environmental Health Protection" for "Sanitarian Services" in (e)(3).

The 1997 amendment rewrote (d).

14-229-102. Individual Sewage Disposal Systems Advisory Committee — Powers and duties.

The Individual Sewage Disposal Systems Advisory Committee shall have the following powers and duties:

(1) To advise with and make recommendations to the Director of the Department of Health and the Director of the Division of Sanitarian Services of the Department of Health, concerning the utilization and application of alternate and experimental individual sewage disposal systems;

(2) To advise with and assist the Division of Sanitarian Services in efforts to promote the experimentation, development, and improvement of individual sewage disposal systems;

(3) To advise with and assist the Division of Sanitarian Services in the development and implementation of:

(A) Training and educational programs for employees of the Division of Sanitarian Services, to acquaint the employees with technological advances in the development of experimental and alternate systems for individual sewage disposal systems;

(B) Opportunities for employees of the Division of Sanitarian Services to participate in seminars and other training programs designed for their technological advancement, including the promulgation of guidelines and regulations for reimbursement of expenses for employees who engage in the training opportunities;

(C) The acquisition of laboratory testing equipment necessary for the conducting of experiments and testing of experimental and alternate individual sewage disposal systems;

(D) The acquisition of necessary field supplies and equipment to enable the Division of Sanitarian Services to engage in necessary field activities to assist property owners in the installation, operation, and repair of experimental and alternate individual sewage disposal systems, and to enable the department to offer technical advice, when requested by property owners, with respect to the operation or repair of the equipment;

(E) To provide, if funds are available therefor, technical assistance, materials, and equipment required for the modification or repair of experimental and alternate individual sewage disposal systems, which have been installed by property owners under permits issued by the department, of equipment approved by the department as being adequate to meet state individual sewage disposal systems standards; and

(F) To cooperate with and offer assistance to other public agencies, private developers, and home owners in the development, installation, operation, repair, modification, and improvement of experimental and alternate individual sewage disposal systems for the purpose of developing the necessary technological advancements required to meet the standards prescribed by the Division of Sanitarian Services

for the installation and operation of individual sewage disposal systems deemed adequate to function, in accordance with the standards in the particular area in which the systems are to be installed.

History. Acts 1983, No. 708, § 2; A.S.A. 1947, § 19-5416.

14-229-103. Termination of water service.

(a) Any municipality owning or operating a public sewer system or sewer improvement district providing sewer service to its citizens may request a water association or water improvement district providing the water service to terminate the water service to any resident who is delinquent at least thirty (30) days in making payment to the municipality for sewer service.

(b) The water association or water improvement district shall send notice to any person who is delinquent in making payments for sewer service of the date the water service will be terminated and shall terminate the water service upon that date unless the balance due the municipality for sewer service has been paid.

(c) The water association or water improvement district shall terminate the water service upon certification by the municipality that the person is more than thirty (30) days delinquent in making payments for sewer service and has been sent notice of the termination of the water service by the municipality.

History. Acts 1995, No. 717, § 1.

CHAPTER 230

WATER, SEWER, AND SOLID WASTE MANAGEMENT FINANCING

SECTION.
14-230-101. Title.
14-230-102. Definitions.
14-230-103. General duties of commission.
14-230-104. [Repealed.]
14-230-105. State loan and grant program authorized.
14-230-106. Eligible applicants.
14-230-107. Applications for grants.
14-230-108. Criteria for selection of loan and grant recipients.
14-230-109. Revolving fund.

Cross References. Purchase or construction of waterworks system, § 14-234-204.

Effective Dates. Acts 1975, No. 274, § 11: July 1, 1975.

Acts 1975 (Extended Sess., 1976), No. 1074, § 2: Jan. 30, 1976. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly, meeting in Extended Session, that the immediate passage of this Act is necessary to prevent irreparable harm to the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 866, § 3: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case Ricarte v. State, CR 86-31, a question has arisen over the validity of Act 1074 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 960, § 11: Mar. 31, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is an immediate need for financial assistance for water, sewer, and solid waste management systems that cannot be met under current laws; and that this act will enable the people of Arkansas to proceed with numerous projects which are delayed for a lack of money. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

14-230-101. Title.

This chapter shall be known as "The Water, Sewer, and Solid Waste Management Systems Finance Act of 1975."

History. Acts 1975, No. 274, § 1; A.S.A. 1947, § 13-2201.

14-230-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Eligible applicant" means a city, a town, a county, a regional water district, a special improvement district, a public facilities board, a rural development authority, a rural waterworks facilities board including boards and commissions thereof, other public entity, or a nonprofit corporation which provides water, sewer, or solid waste services to one (1) or more cities, towns, or counties;

(2) "Commission" means the Arkansas Soil and Water Conservation Commission.

History. Acts 1975, No. 274, § 2; A.S.A. 1947, § 13-2202; Acts 1989, No. 220, § 1; 1997, No. 960, § 1.

A.C.R.C. Notes. The punctuation in the 1997 amendment to this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

Amendments. The 1997 amendment inserted "a rural development authority, a rural waterworks facilities board" in (1); deleted former (2) and (4); and redesignated former (3) as present (2).

14-230-103. General duties of commission.

The Arkansas Soil and Water Conservation Commission shall:

(1) Administer the loan and grant programs authorized under this chapter;

(2) Take necessary action to ensure that the funds are used for the purposes established in this chapter and in accordance with state and federal laws.

History. Acts 1975, No. 274, §§ 5, 6; A.S.A. 1947, §§ 13-2205, 13-2206; Acts 1989, No. 220, § 2.

14-230-104. [Repealed.]

Publisher's Notes. This section, concerning the Local Services Advisory Council, was repealed by Acts 1989, No. 220, § 9. The section was derived from Acts 1975, No. 274, § 9; A.S.A. 1947, § 13-2209.

14-230-105. State loan and grant program authorized.

(a) The commission is authorized to make loans and grants to provide funds for water, sewer, or solid waste management financial assistance.

(b) The commission may provide financial assistance up to the total project cost for water, sewer, or solid waste management systems projects.

History. Acts 1975, No. 274, § 3; A.S.A. 1947, § 13-2203; Acts 1989, No. 220, § 3; 1997, No. 960, § 2.

Amendments. The 1997 amendment rewrote (b).

14-230-106. Eligible applicants.

(a) An eligible applicant is eligible to apply for loans and grants specified in this chapter. Combinations of eligible applicants may apply jointly for loans or grants authorized under this chapter in accordance with § 25-20-101 et seq.

(b)(1) Award of a loan or grant may be made contingent upon the receipt of the federal, state or other financial assistance for which an eligible applicant has applied.

(2) Award of a loan or grant may be made contingent upon the eligible applicant providing additional local funds for water, sewer, or solid waste management systems.

(c) Award of a loan or grant may be made contingent upon (1) the funds provided being the last to be used, (2) the eligible applicant establishing and a maintaining depreciation, debt service or other reserves, or (3) any reasonable condition established by the commission.

History. Acts 1975, No. 274, § 4; A.S.A. 1947, § 13-2204; Acts 1989, No. 220, § 4; 1997, No. 960, §§ 3, 4.

A.C.R.C. Notes. The punctuation in the 1997 amendment to this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

The format of the 1997 amendement to this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the formatting.

Amendments. The 1997 amendment rewrote (b) and (c).

14-230-107. Applications for grants.

(a) The commission shall promulgate such rules, regulations, and forms as are needed for the efficient administration of the chapter.

(b) Applications shall be submitted to the commission.

(c)(1) The commission shall consider the merits of the application and, in accordance with the criteria for selection and the available funds, make a final determination concerning the disposition of the application.

(2) The director of the commission shall, within ten (10) days, notify the applicant of the final action of the commission in accepting, modifying, or rejecting the application.

History. Acts 1975, No. 274, § 5; A.S.A. 1947, § 13-2205; Acts 1989, No. 220, § 5; 1997, No. 960, § 5.

Amendments. The 1997 amendment rewrote (b) and (c); and deleted former (d) and (e).

14-230-108. Criteria for selection of loan and grant recipients.

In selecting the recipients for loans and grants authorized in this chapter, the following factors shall be taken into consideration by the commission:

(1) The financial ability of the eligible applicant to provide the funds for the project;

(2) The burden placed on low income, elderly, or unemployed persons if an eligible applicant constructs a water, sewer, or solid waste management system and pays for the project through user fees, or taxes, or both;

(3) Evaluations and priorities as enunciated in the Arkansas State Water Plan;

(4) State and regional priorities and requirements as recommended by appropriate state and regional agencies;

(5) The amount of fair user charges or other revenues which the project may reasonably be expected to generate; and

(6) The funds necessary to amortize the initial cost and provide for the successful operation and maintenance of the project, including depreciation.

History. Acts 1975, No. 274, § 7, A.S.A. 1947, § 13-2207; Acts 1989, No. 220, § 6; 1997, No. 960, § 6.

Amendments. The 1997 amendment rewrote the section.

14-230-109. Revolving fund.

(a) A special fund, entitled the "Water, Sewer and Solid Waste Systems Revolving Fund", is created to provide a depository for funds which may be appropriated or otherwise secured.

(b) The revolving fund shall be used to provide low interest loans or grants to an eligible applicant for the purposes established in this chapter. Funds from the repayment of loans made under this chapter shall return to the revolving fund and shall be reused in a manner which is consistent with the purposes of this chapter.

(c) The commission is authorized to use the funds made available under this chapter for grants to or for suspended repayment of loans to eligible applicants.

(d) Special terms for repayment of loans, including a negotiated schedule of repayment that reasonably minimizes the user charges and tax burden upon customers of an eligible applicant, may be negotiated by the commission and concluded by contractual agreement. Repayment of loans not exceeding a fifty-year period is authorized.

(e)(1) The commission is authorized to require partial or complete repayment of grants plus the payment of interest accumulated on the sum granted if the operation of a water, sewer, or solid waste management system constructed with the assistance of such grants produces an income which exceeds the sum necessary to repay the federal, state, or other loans for construction of the system and the expenses of operating the system.

(2) The terms and conditions of possible repayment of grants shall be specified and agreed to in writing prior to the disbursement of the grant.

History. Acts 1975, No. 274, § 8; 1975 (Extended Sess., 1976), No. 1074, § 1; A.S.A. 1947, § 13-2208; reen. Acts 1987, No. 866, § 1; Acts 1989, No. 220, § 7; 1997, No. 960, § 7

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 866, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

The punctuation in the 1997 amendment to this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

Amendments. The 1997 amendment rewrote this section.

CHAPTER 231

REFUNDING BONDS FOR SEWERS AND WATERWORKS

SECTION.

14-231-101 — 14-231-116. [Repealed.]

14-231-101 — 14-231-116. [Repealed.]

Publisher's Notes. This chapter was repealed by Acts 1997, No. 214, § 1. The chapter was derived from the following sources:

14-231-101. Acts 1937, No. 297, § 1; Pope's Dig., § 11351; A.S.A. 1947, § 19-4301.

14-231-102. Acts 1937, No. 297, § 2; Pope's Dig., § 11352; A.S.A. 1947, § 19-4302.

14-231-103. Acts 1937, No. 297, § 16; Pope's Dig; § 11366; A.S.A. 1947, § 19-4316.

14-231-104. Acts 1937, No. 297, § 3; Pope's Dig., § 11353; Acts 1943, No. 291, § 1; A.S.A. 1947, § 19-4303.

14-231-105. Acts 1937, No. 297, § 4; Pope's Dig., § 11354; A.S.A. 1947, § 19-4304.

14-231-106. Acts 1937, No. 297, § 13; Pope's Dig., § 11363; A.S.A. 1947, § 19-4313.

14-231-107. Acts 1937, No. 297, § 5; Pope's Dig., § 11355; A.S.A. 1947, § 19-4305.

14-231-108. Acts 1937, No. 297, § 6; Pope's Dig., § 11356; A.S.A. 1947, § 19-4306.

14-231-109. Acts 1937, No. 297, § 7; Pope's Dig., § 11357; Acts 1941, No. 96, § 1; A.S.A. 1947, § 19-4307.

14-231-110. Acts 1937, No. 297, § 8; Pope's Dig., § 11358; A.S.A. 1947, § 19-4308.

14-231-111. Acts 1937, No. 297, § 9; Pope's Dig., § 11359; A.S.A. 1947, § 19-4309.

14-231-112. Acts 1937, No. 297, § 10; Pope's Dig., § 11360; Acts 1943, No. 291, § 2; A.S.A. 1947, § 19-4310.

14-231-113. Acts 1937, No. 297, § 11; Pope's Dig., § 11361; A.S.A. 1947, § 19-4311.

14-231-114. Acts 1937, No. 297, § 12; Pope's Dig., § 11362; A.S.A. 1947, § 19-4312.

14-231-115. Acts 1937, No. 297, § 14; Pope's Dig., § 11364; A.S.A. 1947, § 19-4314.

14-231-116. Acts 1937, No. 297, § 15; Pope's Dig., § 11365; A.S.A. 1947, § 19-4315.

CHAPTER 232

REFUSE DISPOSAL GENERALLY

SECTION.

14-232-101. Definitions.
14-232-102. Construction.
14-232-103. General powers of counties and municipalities.
14-232-104. Revenue bonds — Power to issue — Amount.
14-232-105. Revenue bonds — Terms — Indenture — Execution.
14-232-106. Refunding bonds.
14-232-107 Bonds — Nature of indebtedness — Security.
14-232-108. Receivership.
14-232-109. Investment of public funds in bonds.
14-232-110. Rates and charges.
14-232-111. Lease agreements.
14-232-112. Compacts in joint effort.
14-232-113. Eminent domain.
14-232-114. Bonds — Tax exemption.
14-232-115. County dumping grounds.
14-232-116. Sites or facilities in another county.

Effective Dates. Acts 1971, No. 238, § 17: Mar. 9, 1971. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that it is essential to the health, hygiene and safety of the inhabitants of the State of Arkansas that the authority of counties and municipalities to collect, dispose of, deal in and regulate concerning refuse be clarified and augmented; that this Act and the implementation of this Act are essential to the accomplishment of this purpose and to the welfare of the State of Arkansas and her people. Therefore, an emergency is declared to exist, and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 186, § 3: Feb. 18, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that public interest demands that fees be charged for the use of county dumping facilities. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, safety and welfare, shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this state and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this act. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1983, No. 612, § 4: Mar. 27, 1983. Emergency clause provided: "It is hereby found and declared that the ambiguity existing in present law is resulting in the failure of some counties to adequately provide for solid waste management systems with the result that solid wastes are being improperly disposed of so as to pose a threat to the public health and environment. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall be in force and effect from and after its passage and approval."

Acts 1987, No. 801, § 4: Apr. 8, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to the potential health hazards and offensive nature of solid waste disposal facilities, counties and cities within such counties should not be permitted to establish such facilities in another county without the consent of the appropriate officials of the other county and that this Act is designed to require such consent and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Tort liability for pollution from underground storage tank. 5 ALR 5th 1.

Breach of warranty in sale, installation, repair, design, or inspection of septic or sewage disposal systems. 50 ALR 5th 417.

14-232-101. Definitions.

As used in this chapter, unless the context requires otherwise:

(1) "Governing body" means the council, board of directors, or city commissioner of any municipality or the county judge and quorum court of any county;

(2) "Municipality" means a city of the first class or a city of the second class or an incorporated town;

(3) "Refuse" means refuse, garbage, trash, rubbish, debris of any nature, including, without limitation, food waste, rejected animal or vegetable matter, whether or not intended for or resulting from the preparation of food, paper, clothing, grass, leaves, ashes, tin cans, bottles, and solid waste of any nature whatever;

(4) "Equip" means to install or place in or on any building or structure equipment of any and every kind, whether or not affixed, including, without limitation, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture, furnishings, and personal property of every kind;

(5) "Sell" means to sell for such price, in whatever manner, and upon whatever terms the county or municipality shall determine, including, without limitation, public or private sale, and if public, pursuant to such advertisement as the county or municipality shall determine, to sell for cash or credit, payable in lump sum or in installments over such period as the county or municipality shall determine and, if on credit, with or without interest;

(6) "Lease" means to lease for such rentals, for such periods, and upon such terms and conditions as the county or municipality shall determine, and to grant such purchase options for such prices and upon such terms and conditions as the county or municipality shall determine;

(7) "Facilities" means any real property, personal property, or mixed property of any and every kind that can be used or that will be useful in controlling, collecting, removing, handling, reducing, disposing of, treating, and otherwise dealing in and concerning refuse, including, without limitation, rights-of-way, roads, streets, pipes, pipelines, reservoirs, utilities, materials, motor vehicles, equipment, fixtures, machinery, furniture, furnishings, instrumentalities, and other real, personal, or mixed property of every kind;

(8) "Person" means any individual, corporation, or other organization of whatever nature, whether or not a property owner and whether residing within or without the corporate limits of the municipality or county involved.

History. Acts 1971, No. 238, § 13; 1981, No. 425, § 22; 1983, No. 612, § 2; 1985, No. 977, § 1; A.S.A. 1947, § 82-2725.

14-232-102. Construction.

This chapter shall be liberally construed to accomplish its purposes.

History. Acts 1971, No. 238, § 16; A.S.A. 1947, § 82-2726.

14-232-103. General powers of counties and municipalities.

(a) Any county or municipality in this state is authorized to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in facilities of any nature necessary or desirable for the control, collection, removal, reduction, disposal, treatment, or other handling of refuse. Each undertaking by a county or municipality under this chapter may sometimes be referred to as a "project."

(b) Counties and municipalities are authorized to prescribe, by order or ordinance, reasonable rules and regulations necessary or appropriate to the control, collection, removal, reduction, disposal, treatment, and handling of refuse.

History. Acts 1971, No. 238, §§ 1, 7; A.S.A. 1947, §§ 82-2713, 82-2719.

CASE NOTES

Analysis

Collection of solid waste.
Granting of franchises.

Collection of Solid Waste.

The collection of solid waste is a "public purpose," since the providing of such a service by a county is implied in Ark. Const. Amend. 55 and is specifically provided for in this section. Eaton v. McCuen, 273 Ark. 154, 617 S.W.2d 341 (1981).

Granting of Franchises.

This chapter does not expressly grant municipalities the power to grant exclusive solid waste disposal franchises; however, the legislative intent to displace competition can be inferred from the statutory scheme because it is a necessary and reasonable consequence of engaging in the authorized activity. Regulation of solid waste management is one of the traditional public health functions of local government, and the legislative scheme contemplates displacing competition with regulation in the area of solid waste management and disposal. L & H San., Inc. v. Lake City San., Inc., 769 F.2d 517 (8th Cir. 1985).

Cited: Laidlaw Waste Sys. v. City of Ft. Smith, 742 F. Supp. 540 (W.D. Ark. 1990); Arkansas County v. Burris, 308 Ark. 490, 825 S.W.2d 590 (1992).

14-232-104. Revenue bonds — Power to issue — Amount.

(a) Counties and municipalities are authorized to use any available revenues for the accomplishment of the purposes set forth in § 14-232-103(a), including the proceeds of revenue bonds issued under the authority of this chapter, either alone or together with other available funds and revenues.

(b) The amount of revenue bonds issued shall be sufficient to pay:

(1) The cost of accomplishing the specified purposes;

(2) The cost of issuing bonds;

(3) The amount necessary for a reserve, if desirable;

(4) The amount necessary to provide for debt service on bonds until revenues for the payment thereof are available; and

(5) Any other costs and expenditures of whatever nature incidental to the accomplishment of the specified purposes.

History. Acts 1971, No. 238, § 2; A.S.A. 1947, § 82-2714.

CASE NOTES

Constitutionality.

Bonds authorized pursuant to this chapter were not general obligations of the county but rather were revenue bonds payable solely from the revenues derived from the district's service charges; therefore, Ark. Const. Amend. 10 and former Ark. Const. Amend. 13 (repealed) were not applicable to the value of the bonds issued and the bonds did not create an indebtedness exceeding the limitations of Ark. Const. Amend. 10 and former Ark. Const. Amend 13 (repealed). Eaton v. McCuen, 273 Ark. 154, 617 S.W.2d 341 (1981).

14-232-105. Revenue bonds — Terms — Indenture — Execution.

(a) The issuance of revenue bonds shall be by order of the county court or by ordinance of the municipality.

(b) The bonds may be coupon bonds payable to bearer but subject to registration as to principal and interest, may be made exchangeable for bonds of another denomination, may be in such form and denominations, may be made payable at such places within or without the state, may be issued in one (1) or more series, may bear such date or dates, may mature at such time or times, not exceeding forty (40) years from their respective dates, may bear interest at such rate or rates, may be payable in such medium of payment, may be subject to such terms of redemption, and may contain such terms, covenants, and conditions as the order or ordinance authorizing their issuance may provide, including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the maintaining of rates and charges, the collection and disposition of revenues, the maintenance and investment of various funds and reserves, the nature and extent of the security, the rights, duties, and obligations of the county or municipality and the trustee for the holders and registered owners of the bonds, and the rights of the holders and registered owners of the bonds.

(c) There may be successive bond issues for the purpose of financing the same project and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping projects already in existence, whether or not originally financed by bonds issued under this chapter, with each successive issue to be authorized as provided by this chapter.

(d) Priority between and among issues and successive issues as to security of the pledge of revenues may be controlled by the order or ordinance authorizing the issuance of bonds hereunder.

(e) Subject to the provisions hereof pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas.

(f)(1) The order or ordinance authorizing the bonds may provide for the execution by the county or municipality of an indenture which defines the rights of the holders and registered owners of the bonds and provides for the appointment of a trustee for the holders and registered owners of the bonds.

(2) The indenture may control the priority between successive issues and may contain any other terms, covenants, and conditions that are deemed desirable including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the maintaining of rates and charges, the collection and disposition of revenues, the maintenance of various funds and reserves, the nature and extent of the security, the rights, duties, and obligations of the county or municipality and the trustee, and the rights of the holders and registered owners of the bonds.

(g) The bonds may be sold for such price, including, without limitation, sale at a discount, and in such manner as the county or municipality may determine by order or ordinance.

(h) The bonds shall be executed by the county judge and county clerk of the county or by the mayor and the city clerk or recorder of the municipality, with either the manual or facsimile signature of the county judge or mayor but with the manual signature of the clerk or recorder. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of the bonds or coupons, the signatures shall nevertheless be valid and sufficient for all purposes. The coupons attached to the bonds may be executed by the facsimile signature of the county judge of the county or the mayor of the municipality.

History. Acts 1971, No. 238, § 3; 1975, No. 225, § 23; 1981, No. 425, § 22; A.S.A. 1947, § 82-2715.

14-232-106. Refunding bonds.

(a) Revenue bonds may be issued under this chapter for the purpose of refunding any obligations issued under this chapter. The refunding bonds may be combined with bonds issued under the provisions of § 14-232-105 into a single issue.

(b) When bonds are issued under this section for refunding purposes, they may either be sold or delivered in exchange for the outstanding obligations. If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement thereof.

(c) All bonds issued under this section shall in all respects be authorized, issued, and secured in the manner provided for other bonds issued under this chapter and shall have all the attributes of those bonds.

(d) The order or ordinance under which the refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby.

History. Acts 1971, No. 238, § 5;
A.S.A. 1947, § 82-2717

14-232-107. Bonds — Nature of indebtedness — Security.

(a) The revenue bonds issued under this chapter shall not be general obligations of the county or municipality but shall be special obligations.

(b) In no event shall the revenue bonds constitute an indebtedness of the county or municipality within the meaning of any constitutional or statutory limitation.

(c) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this chapter and that it does not constitute an indebtedness of the county or municipality within any constitutional or statutory limitation.

(d) The principal of and interest on the revenue bonds and the paying agent's fees shall be secured by a pledge of and payable from revenues derived from the rates or charges imposed and collected under the authority of this chapter.

History. Acts 1971, No. 238, § 4;
A.S.A. 1947, § 82-2716.

14-232-108. Receivership.

(a) In the event of a default in the payment of the principal of or interest on any revenue bonds issued under this chapter, any court having jurisdiction may appoint a receiver to take charge of any project acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of revenue bonds issued under this chapter.

(b) The receiver shall have the power to operate and maintain the project and to charge and collect rates and charges sufficient to provide for the payment of the principal of and interest on the bonds, after providing for the payment of all costs of receivership and operating expenses of the project, and to apply the income and revenues derived from the project in conformity with this chapter and the ordinance or indenture authorizing or securing the bonds.

(c) When the default has been cured, the receivership shall be ended and the properties returned to the county or municipality.

(d) The relief afforded by this section shall be construed to be in addition and supplemental to the remedies that may be afforded to the trustee for the holders and registered owners of the bonds and the holders and registered owners of the bonds in the order, ordinance, or indenture authorizing or securing the bonds. It shall be so granted and administered as to accord full recognition to priority rights of holders and registered owners of the bonds as to the pledge of revenues from the project as specified in and fixed by the order, ordinance, or indenture authorizing or securing successive bond issues.

History. Acts 1971, No. 238, § 6; A.S.A. 1947, § 82-2718.

14-232-109. Investment of public funds in bonds.

Any municipality; any board, commission, or other authority established by ordinance of any municipality, or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any municipality; or the board of trustees of any retirement system created by the General Assembly of the State of Arkansas may, in its discretion, invest any of its funds not immediately needed for its purposes in revenue bonds issued under the authority of this chapter. Revenue bonds issued under the authority of this chapter shall be eligible to secure the deposit of public funds.

History. Acts 1971, No. 238, § 10; A.S.A. 1947, § 82-2722.

14-232-110. Rates and charges.

(a) Counties and municipalities are authorized to impose and collect rates and charges for the services provided by projects of the type authorized by this chapter whether or not acquired, constructed, reconstructed, extended, or improved under the authority of this chapter.

(b) Counties and municipalities are authorized to impose upon and collect from all persons who can be served by a project reasonable rates and charges for the services of the project, without regard to whether the person desires to utilize the services.

(c) All or any part of the revenues derived from the rates and charges imposed and collected under the authority of this chapter may be used

for accomplishing and carrying out the authorities conferred by this chapter, including the pledging and use of those revenues for the payment of the principal of and interest on bonds issued under the authority of this chapter.

History. Acts 1971, No. 238, § 7, A.S.A. 1947, § 82-2719.

CASE NOTES

Waste Fees.

The Arkansas County Quorum Court was not authorized by law to collect a waste fee by imposing it as a surcharge on the personal property taxes the residents of the county must pay. Arkansas County v. Burris, 308 Ark. 490, 825 S.W.2d 590 (1992).

Cited: Laidlaw Waste Sys. v. City of Ft. Smith, 742 F. Supp. 540 (W.D Ark. 1990).

14-232-111. Lease agreements.

Counties and municipalities are authorized to enter into leases, as lessor, leasing any project or any facilities thereof. The lease rentals shall be treated as project revenues for all purposes of this chapter.

History. Acts 1971, No. 238, § 8; A.S.A. 1947, § 82-2720.

14-232-112. Compacts in joint effort.

(a) Any county or any municipality is authorized and empowered to enter into a compact with any county or counties, any municipality or municipalities, the United States of America, or the State of Arkansas, or any agency or political subdivision thereof, for the purpose of a cooperative effort to carry out any or all of the purposes authorized by this chapter.

(b) The compact may provide for joint ownership or joint operation of any facilities and may contain other terms and conditions as the parties deem necessary or desirable for the accomplishment of any of the purposes authorized by this chapter.

History. Acts 1971, No. 238, § 11, A.S.A. 1947, § 82-2723.

CASE NOTES

Levy.

City which assumed the debt of authority formed to construct and operate a waste disposal incineration plant, and levied a charge against the residences to pay the authority's debt was without authority to levy a fee that was to pay the long-term debt of the authority. Barnhart v. City of Fayetteville, 321 Ark. 197, 900 S.W.2d 539 (1995).

14-232-113. Eminent domain.

(a) In the event that necessary lands needed for the accomplishment of the purposes authorized by this chapter cannot be acquired by negotiation, any county or municipality is authorized to acquire the needed lands by condemnation proceedings under the power of eminent domain.

(b) Such proceedings may be exercised in the manner now provided for taking private property for rights-of-way for railroads as set forth by §§ 18-15-1202 — 18-15-1207, or in the manner provided by §§ 18-15-301 — 18-15-307, or pursuant to any other applicable statutory provisions enacted for the exercise of the power of eminent domain by the various counties or municipalities in the State of Arkansas.

History. Acts 1971, No. 238, § 12; A.S.A. 1947, § 82-2724.

14-232-114. Bonds — Tax exemption.

Bonds issued under the authority of this chapter shall be exempt from all state, county, and municipal taxes. This exemption includes income taxes.

History. Acts 1971, No. 238, § 9; A.S.A. 1947, § 82-2721.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Ark. Const. Amend. 57, § 1, and § 26-3-302. The Arkansas Const. Amend. 57, § 1, provides that the General Assembly may classify intangible personal property for assessment at lower percentages of value than other property and may exempt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempts all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

14-232-115. County dumping grounds.

(a)(1) The several counties of this state shall designate appropriate areas throughout each county as public dumping grounds for the residents of such counties for the disposal of trash, garbage, and other forms of waste materials.

(2) Each county shall take necessary measures to assure that the trash, garbage, or other forms of waste materials dumped at the designated site will not be blown or otherwise deposited upon adjoining lands. The county shall at reasonable intervals dispose of the trash, garbage, or other forms of waste materials by open burying or other approved means.

(3) The several counties of this state shall be allowed to charge an appropriate fee as set by the county quorum court.

(b) The several counties of this state are authorized to do all things necessary to provide countywide dumping grounds, including the power to acquire real or personal property of every kind, or any interest therein within the county by grant, purchase, gift, or lease, and to hold,

manage, occupy, dispose of, convey, and encumber the same and create a leasehold interest in the same for the benefit of the county and to equip, operate, and maintain the services authorized by this section.

(c) Nothing in this section shall be construed to require the several counties of this state to provide dumping grounds for any municipality located within those counties.

History. Acts 1971, No. 317, §§ 1, 2; 1975, No. 186, § 1; A.S.A. 1947, §§ 82-2727, 82-2728.

14-232-116. Sites or facilities in another county.

(a) No county or municipality in a county shall acquire land for or establish a solid waste disposal site or facility in another county without the prior approval of the county judge and the quorum court of the county wherein the land is proposed to be acquired or wherein the site or facility is proposed to be located.

(b) Any official of a county or a municipality which violates the provisions of this section shall be subject to a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), and the conviction shall be grounds for removal from office.

History. Acts 1987, No. 801, §§ 1, 2.

CHAPTER 233

JOINT COUNTY AND MUNICIPAL SOLID WASTE DISPOSAL

SECTION.
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14-233-122. Purchasing procedures.

Effective Dates. Acts 1979, No. 699, § 22: Apr. 2, 1979. Emergency clause provided: "It is hereby found and declared that adequate, reliable and economical methods and facilities for the disposal, treatment or other handling of solid waste are essential to the continued health, welfare, economic growth and development of the people of the State of Arkansas who can be served by projects completed under the provisions of this act and that the availability of the authorities and powers granted by this act is immediately necessary for the protection and preservation of the health, safety and welfare of the people. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in force and effect from and after its passage and approval."

Acts 1985, No. 678, § 8: Mar. 27, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that a number of sanitation authorities have significant potential for efficient development of solid waste energy generation facilities, that such projects appear to be a potential source of badly needed energy and that action must be taken immediately in some instances if the potentiality of these projects is to be fully realized. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1007, § 7: Apr. 8, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that city and county governments and solid waste authorities are not permitted to collect delinquent solid waste management system fees and service charges under the county property tax collection system which county subordinate service districts are currently authorized to use; that the use of the county property tax collection system will improve fee collection and increase revenues for county solid waste management; and that, at this time, there is an increasingly critical need to collect all necessary revenues to support the operation of city and county solid waste management systems and solid waste authorities. Therefore, in order to promote the effective collection of delinquent solid waste fees or service charges at this critical time, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

CASE NOTES

In General.

The Joint County and Municipal Solid Waste Disposal Act does not provide for notice, public hearings, special referendum, or collection of late service fees by billing as personal property taxes. Freeman v. Curry, 299 Ark. 263, 772 S.W.2d 586 (1989).

14-233-101. Title.

This chapter may be referred to and cited as the "Joint County and Municipal Solid Waste Disposal Act."

History. Acts 1979, No. 699, § 1; A.S.A. 1947, § 82-2731.

CASE NOTES

Cited: Freeman v. Curry, 299 Ark. 263, 772 S.W.2d 586 (1989); Arkansas County v. Burris, 308 Ark. 490, 825 S.W.2d 590 (1992).

14-233-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Board of directors" or "board" means the board of directors of a sanitation authority created under this chapter;

(2) "Bonds" means bonds and any series of bonds authorized by and issued pursuant to the provisions of this chapter;

(3) "Clerk" means the county clerk of a county and the city clerk, city recorder, or town recorder of a municipality, or other similar office of a county or municipality hereafter created or established;

(4) "Costs" or "project costs" means, but shall not be limited to:

(A) All costs of acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto;

(B) All costs of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing them;

(C) Administrative, organizational, legal, engineering, and inspection expenses;

(D) Financing fees, expenses, and costs;

(E) Working capital;

(F) All machinery and equipment including construction equipment;

(G) Interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the issuing sanitation authority;

(H) Establishment of reserves; and

(I) All other expenditures of the issuing sanitation authority incidental, necessary, or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any project and the placing of it in operation;

(5) "County" means any county in this state;

(6) "Governing body" means the quorum court of a county and the council, board of directors, commission, or other governing body of a municipality;

(7) "Member" means a municipality or county which participates, through a sanitation authority, jointly with other municipalities or counties in projects under this chapter;

(8) "Municipality" means a city of the first class or a city of the second class or an incorporated town;

(9) "Person" means any natural person, firm, corporation, nonprofit corporation, association, or improvement district;

(10) "Project" means any real property, personal property, or mixed property of any and every kind that can be used or will be useful in controlling, collecting, storing, removing, handling, reducing, disposing of, treating, and otherwise dealing in and concerning solid waste, including, without limitation, property that can be used or that will be

useful in extracting, converting to steam, including the acquisition, handling, storage, and utilization of coal, lignite, or other fuel of any kind, or water that can be used or that will be useful in converting solid waste to steam, and distributing the steam to users thereof, or otherwise separating and preparing solid waste for reuse, or that can be used or will be useful in generating electric energy by the use of solid waste as a source of generating power and distributing the electric energy to purchasers or users thereof in accordance with the general laws of the state. However, for purposes of this chapter not more than twenty-five percent (25%) of the fuel used to produce steam or generate electricity from any project shall consist of materials other than solid waste;

(11) "Sanitation authority" or "authority" means a public body and body corporate and politic organized in accordance with the provisions of this chapter;

(12) "State" means the State of Arkansas;

(13) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities.

History. Acts 1979, No. 699, § 2; 1985, No. 678, § 1; A.S.A. 1947, § 82-2732.

14-233-103. Construction.

(a) This chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized by this chapter and shall be regarded as supplemental and additional to powers conferred by other laws.

(b) Except as expressly provided in this chapter, the acquisition, construction, reconstruction, enlargement, equipment, or operation and maintenance of projects under the provisions of this chapter need not comply with the requirements of any other law applicable to the acquisition, construction, reconstruction, enlargement, equipment, and operation and maintenance of public works or facilities including, without limitation, laws pertaining to public bidding, paying prevailing wages, transfer or exchange of title to real or personal property, or any other aspect of the acquiring, constructing, reconstructing, enlarging, equipping, or operation or maintenance of public works or public projects, or transfer or exchange of title to real or personal property, none of which laws shall be applicable to projects under this chapter.

(c) This chapter, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes hereof.

History. Acts 1979, No. 699, §§ 18, 19; A.S.A. 1947, §§ 82-2748.

14-233-104. Creation of authority — General powers and restrictions.

(a)(1) Any two (2) or more municipalities, any two (2) or more counties, or any one (1) or more municipalities together with any one (1) or more counties are authorized to create and become members of a sanitation authority as prescribed in this chapter.

(2) Any first-class city, second-class city, or incorporated town may create a sanitation authority under this chapter, and such sanitation authority shall have the same powers as other sanitation authorities vested under this chapter.

(b)(1) Each authority may be empowered to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in or dispose of a project.

(2) Unless limited by the members of the authority in the manner provided in this chapter, any project may be located at any place that in the judgment of the board of directors of the authority best serves the needs of the member municipalities and counties, whether within or without the boundaries of the municipalities and counties.

(c) All projects accomplished by sanitation authorities pursuant to the provisions of this chapter shall be subject to all applicable federal and state requirements for the disposal, treatment, or other handling of solid waste.

History. Acts 1979, No. 699, § 3; A.S.A. 1947, § 82-2733; Acts 1991, No. 962, § 1.

14-233-105. Contents of ordinance — Filing of application — Certificate of incorporation — Amendments.

(a) The governing body of each municipality and county desiring to create and become a member of a sanitation authority may, by ordinance, determine that it is in the best interest of the municipality or county in accomplishing the purposes of this chapter to create and become a member of an authority.

(b) The ordinance shall:

(1) Set forth the names of the municipalities, counties, or both which are proposed to be initial members of the authority;

(2) Specify the powers to be granted to the authority and any limitations on the exercise of the powers granted including limitations on the authority's area of operations, the use of projects by the authority, and the authority's power to issue bonds;

(3) Specify the number of directors of the authority and the voting rights of each director;

(4) Approve an application to be filed with the Secretary of State, setting forth:

(A) The names of all proposed member municipalities;

(B) Copies of all ordinances certified by the respective clerks;

(C) The powers granted to the authority and any limitations on the exercise of the powers granted;

(D) The number of directors of the authority and the voting rights of each director;

(E) The desire that an authority be created as a public body and a body corporate and politic under this chapter;

(F) The name which is proposed for the authority.

(c)(1) The application shall be signed by the mayor of each municipality and county judge of each county, attested by the respective clerks, and subscribed and sworn to before an officer or officers authorized by the laws of this state to administer and certify oaths.

(2) The Secretary of State shall examine the application. If he finds that the name proposed for the authority is not identical with that of any other corporation of this state or of any agency or instrumentality of this state, or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

(3) When the application has been made, filed, and recorded as provided in this chapter, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application.

(d) The Secretary of State shall make and issue a certificate of incorporation pursuant to this chapter under the seal of the state and shall record the certificate with the application. The certificate shall set forth the names of the member municipalities and counties.

(e) In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract of the authority, the authority, in the absence of establishing fraud in the premises, shall be conclusively deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the certificate by the Secretary of State. A copy of the certificate, certified by the Secretary of State shall be admissible in evidence in the suit, action, or proceeding and shall be conclusive proof of the filing and contents of the certificate.

(f)(1) Any application filed with the Secretary of State pursuant to the provisions of this chapter may be amended from time to time with the unanimous consent of the members of the authority evidenced by ordinance of their governing bodies.

(2) The amendment shall be signed and filed with the Secretary of State in the manner provided in this section, whereupon the Secretary of State shall make and issue an amendment to the certificate of incorporation.

History. Acts 1979, No. 699, § 4;
A.S.A. 1947, § 82-2734.

14-233-106. New members — Withdrawal of old members.

(a)(1) After the creation of a sanitation authority, any other municipality or county may become a member upon application to the authority, after adoption of an ordinance by its governing body making the determination prescribed in § 14-233-105 and authorizing the municipality or county to participate, and with the unanimous consent of the members of the authority evidenced by ordinance of their governing bodies.

(2) Copies of the ordinances, certified by the respective clerks of the member municipalities and counties, together with an amendment to the application signed by the mayor of each member and prospective member municipality and the county judge of each member and prospective member county in the manner provided in § 14-233-105, shall be filed with the Secretary of State, whereupon the Secretary of State shall make and issue an amendment to the certificate of incorporation setting forth the then-current names of the member municipalities and counties.

(b)(1) Any municipality or county may withdraw from a sanitation authority at any time without the consent of the other municipalities and counties which are members of the authority. All contractual rights acquired and obligations incurred while the municipality or county was a member shall remain in full force and effect.

(2) The withdrawal shall become effective upon the adoption of an ordinance by the withdrawing municipality or county and the filing of the ordinance with the Secretary of State together with an amendment signed by the mayor of the withdrawing municipality or the county judge of the withdrawing county in the manner provided in § 14-233-105, whereupon the Secretary of State shall make and issue an amendment to the certificate of incorporation setting forth the then-current names of the member municipalities and counties.

History. Acts 1979, No. 699, § 4; A.S.A. 1947, § 82-2734.

14-233-107. Specific powers of authority.

Each sanitation authority shall have all of the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter including, but without limiting the generality of the foregoing, the rights and powers:

(1) To have perpetual succession as a body politic and corporate, and to adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties;

(2) To adopt an official seal and alter it at pleasure;

(3) To maintain an office at such places as it may determine;

(4) To sue and be sued in its own name and to plead and be impleaded;

(5) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the authority under this chapter including contracts with persons, firms, corporations, and others;

(6) To apply to the appropriate agencies of the state, the United States, or any state thereof, and to any other proper agency for such permits, licenses, certificates, or approvals as may be necessary, and to construct, maintain, and operate projects in accordance with, and to obtain, hold and use licenses, permits, certificates, or approvals in the same manner as any other person or operating unit of any other person;

(7) To employ such engineers, architects, attorneys, real estate counselors, appraisers, financial advisors, and other consultants and employees as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor;

(8) To purchase all kinds of insurance including, but not limited to, insurance against tort liability, business interruption, and risks of damage to property;

(9) To fix, charge, and collect rents, fees, and charges for the use of any project or portion thereof or for steam produced therefrom;

(10) To accomplish projects as authorized by this chapter and the ordinances creating the authority;

(11) To distribute steam produced by a project to any person, municipality, or county;

(12) To do any and all other acts and things necessary, convenient, or desirable to carry out the purposes and to exercise the powers granted to the authority by this chapter;

(13) To contract for the sale of electric energy produced by any such project, or to consume electric energy produced by any project.

History. Acts 1979, No. 699, § 6; 1985, No. 678, § 4; A.S.A. 1947, § 82-2736.

14-233-108. Board of directors — Executive committee.

(a) Each sanitation authority shall consist of a board of directors appointed by the governing bodies of the respective municipalities and counties which are members of the authority.

(b) The number and voting rights of directors shall be determined as set forth in § 14-233-105 and shall not thereafter be changed except by unanimous consent of the municipalities and counties which are members of the authority evidenced by ordinances of their governing bodies. Copies of all such ordinances, certified by the respective clerks of the member municipalities and counties, shall be filed with the Secretary of State.

(c) Before entering upon his duties, each appointed director shall take and subscribe to an oath of office in which he shall swear to support the Constitution of the United States and the Constitution of

the State of Arkansas and to discharge faithfully his duties in the manner provided by law.

(d)(1) Except as may otherwise be provided in the application organizing the sanitation authority, the board of directors of the sanitation authority shall annually elect one (1) of the directors as chairman, another as vice chairman, and other persons, who may be but need not be directors, as treasurer, secretary, and if desired, assistant secretary. The office of treasurer may be held by the secretary or assistant secretary.

(2) The board of directors may also appoint such additional officers as it deems necessary.

(3) In the event the board of directors is organized so that no members of the board are actively involved in the actual handling and accounting for sanitation authority funds, the board of directors shall be authorized to waive any requirement for the purchase of a surety bond for the members of the board of directors.

(e)(1) The secretary or assistant secretary of the authority shall keep a record of the proceedings of the authority. The secretary shall be the custodian of all records, books, documents, and papers filed with the authority, the minute book or journal of the authority, and its official seal.

(2) Either the secretary or the assistant secretary of the authority may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that the copies are true copies. All persons dealing with the authority may rely upon such certificates.

(f)(1) A majority of the directors of a sanitation authority then in office shall constitute a quorum. A vacancy in the board of directors of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

(2) Any action taken by the authority under the provisions of this chapter may be authorized by resolution at any regular or special meeting. Each resolution shall take effect immediately and need not be published or posted. A majority of the votes which all directors are entitled to cast shall be necessary and sufficient to take any action or to pass any resolution.

(g) No director of a sanitation authority shall receive any compensation for the performance of his duties under this chapter, but each director may be paid a per diem allowance of twenty-five dollars ($25.00) for attending each meeting of the board and his necessary expenses incurred while engaged in the performance of such duties.

(h) The board of directors of a sanitation authority may create an executive committee of the board and may provide for the composition of the executive committee so as to afford, in its judgment, fair representation of the member municipalities and counties. The executive committee shall have and exercise the powers and authority of the board of directors during intervals between the board's meetings as may be prescribed by its rules, motions, or resolutions. The terms of

office of the members of the executive committee and the method of filling vacancies shall be fixed by the rules of the board of directors of the authority.

History. Acts 1979, No. 699, § 5; 1985, No. 678, § 2; A.S.A. 1947, § 82-2735; Acts 1993, No. 170, § 1.

Amendments. The 1993 amendment added "be" following "who may" in (d)(1); added (d)(3); inserted "a per diem allowance of twenty-five dollars ($25.00) for attending each meeting of the board and" in (g); and made a minor punctuation change.

14-233-109. Bonds — Issuance, execution, and sale.

(a) Sanitation authorities are authorized to use any available funds and revenues for the accomplishment of projects and may issue bonds, as authorized by this chapter, for the purpose of paying project costs and accomplishing projects, either alone or together with other available funds and revenues.

(b)(1) The issuance of bonds shall be by resolution of the board of the sanitation authority.

(2) The bonds may be coupon bonds payable to bearer, subject to registration as to principal or as to principal and interest, or fully registered bonds without coupons, may contain exchange privileges, may be issued in one (1) or more series, may bear such date or dates, may mature at such time or times, not exceeding forty (40) years from their respective dates, may bear interest at such rate or rates, may be in such form, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption in advance of maturity at such prices, and may contain such terms, covenants, and conditions as the resolution may provide, including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the maintenance of various funds and reserves, the investing and reinvesting of any moneys during periods not needed for authorized purposes, the nature and extent of the security, the rights, duties, and obligations of the authority and the trustee for the holders or registered owners of the bonds, and the rights of the holders or registered owners of the bonds.

(c) There may be successive bond issues for the purpose of financing the same project, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping projects already in existence, whether or not originally financed by bonds issued under this chapter, with each successive issue to be authorized as provided by this chapter. Priority between and among issues and successive issues as to security of the pledge of revenues and lien on the project involved may be controlled by the resolution authorizing the issuance of the bonds.

(d) Subject to the provisions of this chapter pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas.

(e) The bonds may be sold at public or private sale for such price, including, without limitation, sale at a discount and in such manner the authority may determine by resolution.

(f) Bonds issued under this chapter shall be executed by the manual or facsimile signatures of the chairman and secretary of the board, but one of such signatures must be manual. The coupons attached to the bonds may be executed by the facsimile signature of the chairman of the board. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes. The seal of the sanitation authority shall be placed or printed on each bond in such manner as the board shall determine.

History. Acts 1979, No. 699, § 7; 1985, No. 678, § 3; A.S.A. 1947, § 82-2737.

14-233-110. Bonds — Trust indenture.

(a) The resolution authorizing the bonds may provide for the execution by the authority with a bank or trust company within or without this state of a trust indenture which defines the rights of the holders and registered owners of the bonds.

(b) The indenture may control the priority between and among successive issues and may contain any other terms, covenants, and conditions that are deemed desirable including, without limitation, those pertaining to the custody and application of proceeds of the bonds, the maintaining of rates and charges, the collection and disposition of revenues, the maintenance of various funds and reserves, the nature and extent of the security and pledging of revenues, the rights, duties, and obligations of the agency and the trustee for the holders or registered owners of the bonds, and the rights of the holders and registered owners of the bonds.

(c) The resolution or trust indenture authorizing or securing any bonds issued under this chapter may, or may not, impose a foreclosable mortgage lien upon, or security interest in, the project financed in whole or in part with the proceeds of the bonds, and the nature and extent of the mortgage lien or security interest may be controlled by the resolution or trust indenture including without limitation, provisions pertaining to the release of all or part of the project properties from the mortgage lien or security interest and the priority of the mortgage lien or security interest in the event of the issuance of additional bonds.

(d) Subject to the terms, conditions, and restrictions which may be contained in the resolution or trust indenture, any holder or registered owner of bonds issued under this chapter, or of any coupon attached thereto, may, either at law or in equity, enforce the mortgage lien or security interest and may, by proper suit, compel the performance of the duties of the members and employees of the sanitation authority as set forth in the resolution or trust indenture authorizing or securing the bonds.

History. Acts 1979, No. 699, § 7; A.S.A. 1947, § 82-2737.

14-233-111. Bonds — Default.

(a)(1) In the event of a default in the payment of the principal of, premium on, if any, or interest on any bonds issued under this chapter, any court having jurisdiction may appoint a receiver to take charge of all or any part of the project in which there is a mortgage lien or security interest securing the bonds in default.

(2) The receiver shall have the power and authority to operate and maintain the project, to charge and collect rates, payments, rents, and charges sufficient to provide for the payment of the principal of, premium on, if any, and interest on the bonds, after providing for the payment of any costs of receivership and operating expenses of the project, and to apply the revenues derived from the project in conformity with this chapter and the resolution or trust indenture authorizing or securing the bonds.

(3) When the default has been cured, the receivership shall be ended and the project returned to the sanitation authority.

(b) The relief afforded by this section shall be construed to be in addition and supplemental to the remedies that may be afforded the trustee for the bondholders and the bondholders in the resolution or trust indenture authorizing or securing the bonds and shall be so granted and administered as to accord full recognition to priority rights of bondholders as to the pledge of revenues from, and the mortgage lien on and security interest in, the project as specified in and fixed by the resolutions or trust indentures authorizing or securing successive bond issues.

History. Acts 1979, No. 699, § 7; A.S.A. 1947, § 82-2737.

14-233-112. Bonds — Liability — Payment and security.

(a) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this chapter, that the bonds are obligations only of the sanitation authority, and that in no event shall they constitute an indebtedness for which the faith and credit of the member municipalities or counties or any of its revenues are pledged.

(b) No member of the board of directors shall be personally liable on the bonds or for any damages sustained by anyone in connection with any contracts entered into in carrying out the purpose and intent of this chapter unless he shall have acted with corrupt intent.

(c) The principal of, and interest on, the bonds shall be payable from, and may be secured by a pledge of, revenues derived from the project acquired, constructed, reconstructed, equipped, extended, or improved, in whole or in part, with the proceeds of the bonds or obligations of the owners of projects.

History. Acts 1979, No. 699, § 8; A.S.A. 1947, § 82-2738.

14-233-113. Refunding bonds — Issuance.

(a) Bonds may be issued for the purpose of refunding any bonds issued under this chapter. Refunding bonds may be combined with bonds issued under the provisions of § 14-233-109 into a single issue.

(b) When refunding bonds are issued, they may either be sold or delivered in exchange for the bonds being refunded. If sold, the proceeds may either be applied to the payment of the bonds being refunded or deposited in escrow for the retirement thereof.

(c) All refunding bonds shall in all respects be issued and secured in the manner provided for other bonds issued under this chapter and shall have all the attributes of those bonds.

(d) The resolution under which refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on and security interest in project revenues and the project as was enjoyed by the bonds refunded by them.

History. Acts 1979, No. 699, § 9; A.S.A. 1947, § 82-2739.

14-233-114. Contracts with municipalities or counties — Rates, fees, and charges — Pledges.

(a) Any municipality or county which is a member of a sanitation authority may contract with the authority to utilize any project upon any terms and conditions as are deemed necessary, convenient, or desirable by the municipality or county and the authority including, without limitation, agreements on the part of the municipality or county:

(1) To deliver all solid waste collected by or on behalf of the municipality or county to a particular project for disposal, treatment, or other handling; and

(2) To prohibit, by ordinance or other legal means, the disposal, treatment, or other handling of solid waste within the corporate boundaries of the municipality or county, by persons other than the sanitation authority or any person designated by the sanitation authority.

(b) Any municipality or county which is a member of a sanitation authority may:

(1) Require, by ordinance or other legal means, that solid waste generated or collected within the corporate boundaries of the municipality or county be delivered to a particular project for disposal, treatment, or other handling;

(2) Prohibit, by ordinance or other legal means, the collection, disposal, treatment, or other handling of solid waste within the corporate boundaries of the municipality or county, by persons other than the

municipality or county, the sanitation authority, or any persons designated by the municipality or county or the sanitation authority;

(3) Provide, by ordinance or other legal means, that no person, other than as may be designated by the municipality or county or the sanitation authority, shall engage in the collection or utilization of solid waste within the corporate boundaries of the municipality or county which would be competitive with the purposes or activities of the sanitation authority as provided in this chapter; and

(4) Covenant in connection with the issuance of bonds, notes, or other evidence of indebtedness to adopt any ordinance described in subdivisions (b)(1)-(3) of this section and that any ordinance so adopted shall remain in full force and effect and shall be enforced so long as any bonds, notes, or other evidences of indebtedness remain outstanding.

(c) A sanitation authority is authorized to fix, charge, and collect rates, fees, and charges for disposal, treatment, or other handling of solid waste at a project. If duly authorized by the municipal or county members of a sanitation authority, the santitation authority may implement the collection procedures through the personal property tax system provided for by § 8-6-211 or § 8-6-212. For as long as any bonds are outstanding and unpaid, the rates, fees, and charges shall be so fixed by the authority as to provide revenues sufficient:

(1) To pay all costs of and charges and expenses in connection with the proper operation and maintenance of its projects, and all necessary repairs, replacements, or renewals thereof;

(2) To pay, when due, the principal of, premium, if any, and interest on all bonds including bonds subsequently issued for additional projects, payable from the revenues;

(3) To create and maintain reserves as may be required by any resolution or trust indenture authorizing or securing bonds; and

(4) To pay any and all amounts which the authority may be obligated to pay from project revenues by law or contract.

(d) Any pledge made by a sanitation authority pursuant to this chapter shall be valid and binding from the date the pledge is made. The revenues so pledged and then held or thereafter received by the authority or any fidiciary on its behalf shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act. The lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority without regard to whether such parties have notice thereof.

(e) The resolution, trust indenture, or other instrument by which a pledge is created need not be filed or recorded in any manner.

History. Acts 1979, No. 699, § 10; 1985, No. 678, § 5; A.S.A. 1947, § 82-2740; Acts 1991, No. 1007, § 3.

RESEARCH REFERENCES

UALR L.J. Survey—Environmental Law, 14 UALR L.J. 779.

14-233-115. Rights of bondholders.

Any holder or registered owner of bonds or coupons pertaining to the bonds, except to the extent the rights given in this chapter may be restricted by the resolution or trust indenture authorizing or securing the bonds and coupons may, either at law or in equity, by suit, action, mandamus, or other proceeding protect and enforce any and all rights under the laws of the state or granted under this chapter or, to the extent permitted by law, under the resolution or trust indenture authorizing or securing the bonds or under any agreement or other contract executed by a municipality, county, or sanitation authority pursuant to this chapter, and may enforce and compel the performance of all duties required by this chapter or by the resolution or trust indenture to be performed by any municipality, county, or sanitation authority, or by any officer of the foregoing, including the fixing, charging, and collecting of rates, fees, and charges.

History. Acts 1979, No. 699, § 11; A.S.A. 1947, § 82-2741.

14-233-116. Bonds — Tax exemption.

Bonds issued under the provisions of this chapter, and the interest thereon, shall be exempt from all state, county, and municipal taxes, including property, income, inheritance, and estate taxes.

History. Acts 1979, No. 699, § 12; A.S.A. 1947, § 82-2742.

14-233-117. Tax exempt status of property and income of authority.

Each sanitation authority created pursuant to this chapter will be performing public functions and will operate in a governmental capacity as a public instrumentality of the municipalities or counties which are members of the authority. Accordingly, all properties at any time owned by the authority and the income therefrom shall be exempt from all taxation in the State of Arkansas and the authority shall retain all immunities of the municipalities and counties which are members of the authority.

History. Acts 1979, No. 699, § 13; A.S.A. 1947, § 82-2743; Acts 1991, No. 960, § 1.

14-233-118. Investment of public funds in bonds.

Any municipality, any board, commission, or other authority established by ordinance of any municipality, or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any municipality, or the board of trustees of any retirement system created by the General Assembly of the State of Arkansas, may in its discretion, invest any of its funds not immediately needed for its purposes in bonds issued under the provisions of this chapter. Bonds issued under the provisions of this chapter shall be eligible to secure the deposit of public funds.

History. Acts 1979, No. 699, § 14;
A.S.A. 1947, § 82-2744.

14-233-119. Transfer of facilities to authority by county or municipality.

Any municipality or county may acquire facilities for a project, or any portion thereof, including a project site, by gift, purchase, lease, or condemnation, and may transfer the facilities to a sanitation authority by sale, lease, or gift. The transfer may be authorized by ordinance of the governing body without regard to the requirements, restrictions, limitations, or other provisions contained in any other law.

History. Acts 1979, No. 699, § 15;
A.S.A. 1947, § 82-2745.

14-233-120. Annual report.

Within the first ninety (90) days of each calendar year, each sanitation authority shall make a written report to the governing body of each municipality and county which are members of the authority concerning its activities for the preceding calendar year. Each report shall set forth a complete operating and financial statement covering its operation during the year.

History. Acts 1979, No. 699, § 17;
A.S.A. 1947, § 82-2747

14-233-121. Dissolution of authority.

(a) Whenever the member municipalities and counties shall by ordinance determine that the purposes for which the sanitation authority was formed have been substantially fulfilled and that all bonds issued and all other obligations incurred by the authority have been fully paid or satisfied, the member municipalities and counties may by ordinance declare the authority to be dissolved.

(b) On the effective date of the dissolution, the title to all funds and other property owned by the authority at the time of the dissolution shall vest in all or any number of the member municipalities and

counties in the manner provided in the ordinances declaring the dissolution.

(c) Copies of all the ordinances, certified by the respective clerks of the member municipalities and counties, shall be filed with the Secretary of State.

History. Acts 1979, No. 699, § 16; A.S.A. 1947, § 82-2746.

14-233-122. Purchasing procedures.

The board of each sanitation authority shall adopt county purchasing procedures, as provided in § 14-22-101 et seq., as the approved purchasing procedures for the district.

History. Acts 1995, No. 163, § 2.

CHAPTER 234

WATERWORKS AND WATER SUPPLY

SUBCHAPTER.
1. General Provisions.
2. Purchase and Construction.
3. Waterworks Commissions.
4. Recreational Activities.
5. Joint Systems.

RESEARCH REFERENCES

Ark. L. Rev. Looney, Modification of Arkansas Water Law: Issues and Alternatives, 38 Ark. L. Rev. 221.

C.J.S. 87 C.J.S., Towns., § 36.

94 C.J.S., Water, §§ 241, 319(7).

UALR L.J. Comment, Arkansas at the Water Crossroads: Regulations or Solutions?, 7 UALR L.J. 401.

Subchapter 1 — General Provisions

SECTION.
14-234-101. Definitions.
14-234-102. Construction.
14-234-103. Improvements — Financing with bonds.
14-234-104. Improvements — Financing with promissory notes.
14-234-105. Alteration despite zoning regulations.
14-234-106. Relocation of waterworks or sewer system by federal government.
14-234-107. Cities of the first class — Operation by city in governmental capacity.
14-234-108. Cities of the first class — Sale or purchase of water to other municipalities.
14-234-109. Cities of the first class — Sale of water to certain persons.
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14-234-111. Service to adjacent areas — Municipalities generally.
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SECTION.
14-234-113. Service to other municipalities.
14-234-114. Payments from water revenues in lieu of taxes.
14-234-115. Water impoundments in other counties — Payment in lieu of taxes.
14-234-116. Waterworks and sewer commission.
14-234-117. Return of dedicated property.
14-234-118. No abrogation of existing contracts — Exception.
14-234-119. Annual audits.
14-234-120. Filing of audit report.
14-234-121. Review of audit report by board.
14-234-122. Penalty provision.

Cross References. Wastewater treatment districts, § 14-250-101 et seq.

Preambles. Acts 1959, No. 288 contained a preamble which read: "WHEREAS, near many municipalities of the State of Arkansas are areas that, while they are highly developed, are not a part of any municipality and are without water or sewer services, although they are able to pay for the cost of such services through service charges, but under the present statutes the cities cannot extend their service lines beyond their corporate limits to these areas although the cities can deliver surplus water at their corporate limits or can arrange for sewage collection and disposal up to their corporate limits, but the areas have no way to secure the money to pay for these connections except by the organization of suburban improvement districts, with the consequent overhead costs; and

"WHEREAS, the lack of water and sewer services constitutes a serious threat to the health and comfort not only of the residents in said areas but of the inhabitants of the nearby city;

"Now, therefore...."

Acts 1965, No. 50 contained a preamble which read: "WHEREAS, Many municipalities of this State have constructed or acquired waterworks systems pursuant to the authority contained in Act 131 of the Acts of the General Assembly for the year 1933, as amended; and

"Whereas, said laws authorize water revenues to be used for other municipal purposes only if a surplus exists; and

"Whereas, said laws specify that no surplus exists unless, among other things, the waterworks system has on hand funds in excess of the operating authority's estimated operation and maintenance requirements for the remainder of the fiscal year then current and for the fiscal year next ensuing; and

"Whereas, municipalities of this State, at an expense to the general funds, furnish their waterworks systems with police, fire and health protection and with administrative and other services which a privately owned utility would pay for through taxes; and

"Whereas, there is no statute authorizing such municipal waterworks systems to pay for said services except from surplus revenues; and

"Whereas, due to the definition of surplus revenues as set forth in the aforesaid amended Act, it is unlikely that many waterworks systems will accumulate such surpluses;

"Now, Therefore...."

Effective Dates. Acts 1949, No. 49, § 9: approved Feb. 7, 1949. Emergency clause provided: "It is found and determined as a fact that pure water for drinking purposes and domestic use, as well as water for fire protection, is an imperative need in cities of the first class and other municipalities, that the passage of this Act will facilitate the construction of improvements to waterworks systems owned by cities of the first class and the financing thereof, and will do away with uncertainty in the existing laws as to waterworks systems originally constructed and paid for by improvement districts in cities of the first class, and will facilitate the furnishing of water by cities of the first class in their governmental capacity to other municipalities, and to improvement districts in other municipalities.

"Therefore, it is hereby declared that an emergency exists and that this Act is necessary for the immediate preservation of the public peace, health and safety, and that this Act shall take effect and be in force from and after its passage."

Acts 1955, No. 321, § 11: Mar. 21, 1955. Emergency clause provided: "It is found to

be a fact that the proper operation, maintenance and improvement of many municipal waterworks systems are being hampered and delayed because of inadequate financing provisions under the existing law and because of inadequate ratemaking authority, and the water supply of said municipalities is being seriously threatened and curtailed thereby, and an emergency is thereby created and is hereby declared, and this Act, being necessary for the immediate preservation of the public welfare, peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1959, No. 184, § 2: Mar. 6, 1959. Emergency clause provided: "It is hereby found and determined by the General Assembly that there are a number of cities in this State who, for the protection of the health and safety of their inhabitants, must enlarge their water system; that many cities may obtain an adequate and safe water supply only by purchasing water from an adjacent city or town; and, that the laws of this State are not clear as to the authority of cities to make the necessary expansions and agreements to accomplish such purposes, and that only by the immediate passage of this Act may such situation be corrected. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1959, No. 288, § 7: Mar. 26, 1959. Emergency clause provided: "In order to secure efficiency and economy in the operation of water and sewer services and to promote the health and comfort of residents adjacent to a municipality, there is a need for the authorization granted by this Act, and therefore an emergency is declared and this Act, being necessary for the preservation of the public peace, health and safety shall take effect and be in force upon its passage and approval."

Acts 1965, No. 476, § 3: Mar. 20, 1965. Emergency clause provided: "It has been found and determined by the General Assembly of the State of Arkansas that the United States Government is now constructing a number of flood control projects in the State of Arkansas, necessitating the alteration or relocation of certain municipally owned waterworks systems located in these projects and that municipalities do not presently have the authority to grant such rights to the Federal Government and therefore an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1969, No. 90, § 3: Feb. 21, 1969. Emergency clause provided: "It is hereby found that a 4% rate of interest now allowed by law is hampering municipalities in financing of improvements to their municipal water systems, an emergency is declared to exist and this act is necessary for the immediate preservation of the public peace, health and safety and shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 529, § 5: Mar. 22, 1979. Emergency clause provided: "It has been found and it is hereby declared that the interest rate limitation presently in effect for certain revenue promissory notes secured by pledges of municipal water system revenues (being six percent (6%) per annum) is not adequate to permit the interim financing by that method of needed municipal water system improvements and that certain of these improvements are urgently and immediately needed. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in effect upon its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety shall be in effect from and after its passage and approval."

Acts 1989, No. 254, § 5: Feb. 24, 1989. Emergency clause provided: "It is hereby

found and determined by the General Assembly that present law is unclear regarding whether municipalities may borrow funds to refinance existing obligations pertaining to their waterworks and sewage systems; that this Act clarifies the law to specifically grant municipalities that authority; that until this Act becomes effective municipalities are going to be adversely affected; and that this Act should therefore be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

14-234-101. Definitions.

As used in this act unless the context requires otherwise:

(1) "Operating authority" means either the city council, legislative body, or board of commissioners, whichever, in a given instance, shall be charged with the responsibility of operating the municipal waterworks system;

(2) "Nonresident consumer" means any consumer who purchases water within the municipal boundaries, which water is then transported to a point outside the municipal boundaries for use or resale; the term also applies to any consumer receiving service outside the municipality;

(3) "Operation and maintenance," as used in this act and in all other acts relating to municipally owned waterworks systems includes, among other items of operation and maintenance, taxes, improvements, extensions, and additions to the waterworks system.

History. Acts 1955, No. 321, § 2; A.S.A. 1947, § 19-4202.1.

Meaning of "this act". Acts 1955, No. 321, is codified as §§ 14-234-101, 14-234-102, 14-234-104, 14-234-110, 14-234-212, 14-234-214, and 14-234-310.

CASE NOTES

Construction.

The Supreme Court of Arkansas and not the federal district court had the final word as to the meaning of this section. Davis v. City of Little Rock, 136 F. Supp. 725 (E.D. Ark. 1955).

Cited: City of Little Rock v. Chartwell Valley Ltd. Partnership, 299 Ark. 542, 772 S.W.2d 616 (1989).

14-234-102. Construction.

This act, being necessary for the public health, safety, and welfare, shall be liberally construed to effectuate its purposes.

History. Acts 1955, No. 321, § 10; A.S.A. 1947, § 19-4259.

Meaning of "this act". See note to § 14-234-101.

14-234-103. Improvements — Financing with bonds.

(a) Whenever any municipality shall own or operate a waterworks system and shall desire to construct improvements and betterments thereto, it may issue revenue bonds under the provisions of this section to pay for them. The procedure for issuance of bonds shall be as provided in this section.

(b) The legislative body of the municipality shall provide for the issuance of revenue bonds by ordinance. The ordinance shall set forth a brief and general description of the contemplated improvements and betterments, the amount, rate of interest, time and place of payment, and other details in connection with the issuance of the bonds.

(c) The bonds shall bear interest at such rate or rates, payable semiannually, and shall be payable at such times and place not exceeding forty (40) years from their date as shall be prescribed in the ordinance providing for their issuance.

(d) The ordinance shall also declare that a statutory mortgage lien shall exist upon the waterworks system to secure the payment of the bonds and interest.

(e)(1) The ordinance shall fix the minimum rate or rates for water to be collected prior to the payment of all of the bonds, with exceptions as may be provided in the ordinance, and shall pledge the revenues derived from the waterworks system for the purpose of paying the bonds and interest thereon.

(2) The pledge shall definitely fix and determine the amount of revenue which shall be necessary to be set apart and applied to the payment of principal and interest on the bonds and the proportion of the balance of the revenues or income which are to be set aside as a proper and adequate depreciation account.

(3) The rates to be charged for the services of the waterworks shall be sufficient to provide for the payment of all interest upon all bonds, to create a sinking fund to pay the principal thereof as and when payment becomes due, to provide for the operation and maintenance of the system, and to provide an adequate depreciation account.

(f) The ordinance:

(1) Shall provide, find, and declare, in addition to the other requirements set out in this section, the value of the then-existing system and the value of the property proposed to be constructed, and that the revenues derived from the entire system when the contemplated betterments and improvements are completed shall be derived according to those values and that so much of the revenue as is in proportion to the value of the betterments and improvements as against the value of the previously existing plant as so determined shall be set aside and used solely and only for the purpose of paying the revenue bonds issued for the betterments, together with costs of the operation and the depreciation thereof, and the revenue shall be deemed to be income derived exclusively from the betterments and improvements; or

(2) Shall provide that there shall be set aside and used, solely and only for the payment or retirement of revenue bonds issued for the

betterment or improvement, all or any part of the revenues derived from the operation of the waterworks system not presently required to be set aside for other purposes by an ordinance of the municipality authorizing the issuance of revenue bonds then outstanding.

(g)(1) The proceeds derived from the sale of the bonds shall be used solely for the purpose of making betterments and improvements to the waterworks system owned or operated by the municipality.

(2) The terms "betterments" and "improvements" include mains, pipelines, hydrants, meters, valves, standpipes, storage tanks, storage basins, pumping tanks, intakes, wells, clear water wells, impounding reservoirs, pumps, purification plants and units thereof, filtration plants and units thereof, as well as all other improvements and betterments.

(h)(1) Bonds issued under the provisions of this section shall be payable solely from revenues derived from such waterworks system.

(2) The bonds shall not in any event constitute an indebtedness of the municipality within the meaning of the constitutional provisions or limitations.

(3) It shall be plainly stated on the face of each bond that it is issued under the provisions of this section and that it does not constitute an indebtedness of the municipality within the constitutional limitation.

History. Acts 1949, No. 49, § 6; 1981, No. 425, § 46; A.S.A. 1947, § 19-4269.3.

Publisher's Notes. Acts 1949, No. 49, § 7½, provided this act would be cumulative and would offer an alternative remedy as provided in the act and would not repeal or amend any act or law of the State of Arkansas except as specifically provided.

14-234-104. Improvements — Financing with promissory notes.

(a) Any municipality owning or operating a waterworks system, however constructed or acquired, and desiring to construct improvements and betterments thereto, may borrow money to be used for those purposes, to refinance or retire existing indebtedness related to the waterworks system, or to provide funds for preliminary expenses prior to the issuance of revenue bonds, the loan to be evidenced by revenue promissory notes as set out in this section. The money so borrowed shall be deposited in a revenue note fund and shall be used solely for the purposes authorized in this section.

(b) The note or notes evidencing the loan shall be authorized by the legislative body of the municipality and shall be due in no more than five (5) years from date and shall bear interest at a rate or rates as shall be provided in the ordinance authorizing their issuance, interest payable semiannually.

(c)(1) The note or notes shall be payable solely from the revenues derived from the waterworks system and shall not in any event constitute an indebtedness of the municipality within the meaning of the constitutional provisions or limitations.

(2) It shall be plainly stated on the face of each note that it has been issued under the provisions of this act and that it does not constitute an

indebtedness of the municipality within any constitutional or statutory limitations.

(d) The note or notes shall be subordinate to any outstanding revenue bonds theretofore issued by the municipality.

(e) It shall be no objection to the subsequent issue of any revenue bonds that a portion of the proceeds received from the sale of the revenue bonds is to be used to retire the indebtedness permitted by this section. If the proceeds of the bonds are so used, then the improvements constructed or purchased with the proceeds of the loan authorized by this section shall be considered to be a portion of the improvements constructed or purchased with the revenue bonds subsequently issued and shall be subject to the lien of the bonds.

(f) All interest paid on the revenue bonds shall be exempt from State of Arkansas income tax.

History. Acts 1955, No. 321, § 5; 1969, No. 90, § 1; 1979, No. 529, § 1; 1981, No. 425, § 42; A.S.A. 1947, § 19-4218.1; Acts 1989, No. 254, § 1.

Publisher's Notes. Acts 1979, No. 529, § 2, provided: "Nothing set forth in this act shall be construed to affect bonds previously issued or other obligations previously incurred under Act No. 321 of 1955, as amended, which obligations are ratified and confirmed."

Meaning of "this act". See note to § 14-234-101.

14-234-105. Alteration despite zoning regulations.

Any municipality maintaining facilities in an area zoned subsequent to the construction of the facilities may add to, alter, expand, or change the facilities upon the land now used for those purposes, or upon lands immediately adjacent thereto, without regard to the zoning regulation for the area if the operating authority of the waterworks system deems the action necessary for the proper operation of its system.

History. Acts 1955, No. 321, § 8; A.S.A. 1947, § 19-4258.

14-234-106. Relocation of waterworks or sewer system by federal government.

(a) All cities and incorporated towns in the State of Arkansas are authorized to grant the United States of America the right to alter or relocate any portion of a municipally owned waterworks or sewer system in connection with the construction, development, operation, or maintenance of any flood control or other public project being constructed, operated, developed, or maintained by the United States of America, upon such terms and conditions and for such consideration as the cities or towns may determine to be just and proper.

(b) The cities or towns of each county of the State of Arkansas shall have power to execute any and all contracts, deeds, easements, subordination agreements, and other instruments of conveyance as may be required in or convenient to the exercise of the powers granted in this

section, whether those powers are held in a governmental or proprietary capacity.

History. Acts 1965, No. 476, §§ 1, 2; A.S.A. 1947, §§ 19-4271, 19-4272.

14-234-107. Cities of the first class — Operation by city in governmental capacity.

Every city of the first class shall operate its waterworks system, however acquired, in its governmental capacity.

History. Acts 1949, No. 49, § 4; A.S.A. 1947, § 19-4269.1.

Publisher's Notes. As to the cumulative nature of Acts 1949, No. 49, see "Publisher's Notes" to § 14-234-103.

14-234-108. Cities of the first class — Sale or purchase of water to other municipalities.

(a)(1) A city of the first class owning or operating a waterworks system may, in its governmental capacity, sell water at contractual rates to another municipality of this state, or to an improvement district created under the laws of this state.

(2) A municipality of this state, or an improvement district created under the laws of this state, may, in its governmental capacity, purchase water at contractual rates from a city of the first class of this state and may expend the necessary funds to connect its distribution system with the supply or other mains of the selling municipality.

(b)(1) The contract between two (2) municipalities of this state for the sale and purchase of water, or between a municipality of this state and an improvement district created under the laws of this state for the sale and purchase of water, shall be in writing, shall be authorized by ordinances adopted by the respective governing bodies of the contracting municipalities, or by ordinance adopted by the governing body of the contracting municipality and by resolution adopted by the board of commissioners of the contracting improvement district, and shall be signed by the mayor of each contracting municipality and by the chairman of the board of each contracting improvement district.

(2) The contract may be for a term of not exceeding twenty (20) years and may by its terms fix the rate or rates to be paid for the water for the entire term of the contract, or may fix the rate or rates for the first year, two (2) years, or five (5) years, with appropriate provisions for arriving at the rate or rates, for each succeeding one-year, two-year, or five-year period.

(3) The contract may also contain other appropriate provisions which will protect the respective interest of the contracting parties.

History. Acts 1949, No. 49, § 5; A.S.A. 1947, § 19-4269.2.

Publisher's Notes. As to the cumulative nature of Acts 1949, No. 49, see "Publisher's Notes" to § 14-234-103.

CASE NOTES

Analysis

Contract modification.
Contract term.

Contract Modification.

Only a city, and not the entity that operates the utility of the city, has the authority to enter into or modify contracts, and the conduct of the entity in supplying water in excess of the amounts specified in a contract did not have the effect of modifying the contract. City of Lamar v. City of Clarksville, 314 Ark. 413, 863 S.W.2d 805 (1993).

Contract Term.

A forty-year water supply agreement was contrary to subdivision (b)(2) of this section, and thus was void as a matter of law. City of Lamar v. City of Clarksville, 314 Ark. 413, 863 S.W.2d 805 (1993).

14-234-109. Cities of the first class — Sale of water to certain persons.

(a) Any city of the first class owning or operating a water system may, in its governmental capacity, sell surplus water at contractual rates to any person engaged in the business of selling and distributing water to consumers within a zone which is adjacent to and commercially a part of the city, or within any municipality which is within a zone adjacent to and commercially a part of the city, provided that the person has been authorized to engage in such business by the legal authority with jurisdiction to regulate it.

(b) Delivery of the water to the person shall be made at a point not beyond the corporate limits of the city.

History. Acts 1949, No. 49, § 7; 1951, No. 268, § 1; A.S.A. 1947, § 19-4269.4.

Publisher's Notes. As to the cumulative nature of Acts 1949, No. 49, see "Publisher's Notes" to § 14-234-103.

14-234-110. Waterworks operated in governmental capacity — Services to nonresident consumers.

(a) A municipality owning a waterworks system shall operate its entire system in a governmental and not proprietary capacity.

(b)(1) The municipality shall have the option of extending its services to any consumer outside the municipal boundaries, but it shall not be obligated to do so.

(2) No municipality shall be obligated to supply any fixed amount of water or water pressure to nonresident consumers, nor shall a municipality be obligated to increase the number or size of, or change the location of, any mains or pipes outside its boundaries.

(3) Water may be supplied to nonresident consumers at such rates as the legislative body of the municipality may deem just and reasonable, and the rates need not be the same as the rates charged residents of the municipality.

History. Acts 1955, No. 321, § 7; A.S.A. 1947, § 19-4257.

Cross References. Rate-making authority, § 23-4-201.

CASE NOTES

ANALYSIS

Constitutionality.
Construction.
Authority to extend services.
Rates.

Constitutionality.

Where it appeared that certain questions as to the constitutionality raised in action in federal district court against city commissioners seeking to enjoin enforcement of ordinance which established different rate as to resident and nonresident consumers of municipal waterworks might not have to be decided, since case might be decided on purely state grounds, such case would, for reasons of comity, be dismissed with right to pursue remedy in state courts. Davis v. City of Little Rock, 136 F. Supp. 725 (E.D. Ark. 1955).

Construction.

The Supreme Court of Arkansas and not the federal district court had the final word as to the meaning of this section. Davis v. City of Little Rock, 136 F. Supp. 725 (E.D. Ark. 1955).

Authority to Extend Services.

The General Assembly fully intended to empower municipalities with authority to extend water and sewer services beyond their boundaries, but no one, including water commissions or sewer committees, can obligate a municipality to extend those services. City of Little Rock v. Chartwell Valley Ltd. Partnership, 299 Ark. 542, 772 S.W.2d 616 (1989).

Rates.

The provisions of this section permitting the fixing of different rates as to nonresident consumers from the rates of resident consumers are permissive only. Davis v. City of Little Rock, 136 F. Supp. 725 (E.D. Ark. 1955).

Provision permitting municipality to charge nonresident consumers a higher rate than resident consumers is valid. Delony v. Rucker, 227 Ark. 869, 302 S.W.2d 287 (1957).

Where there was a contractual standard that any "increase or decrease in rates shall be based on a demonstrable increase or decrease in the costs of performance hereunder," the trial judge properly used the language of the contract as the standard for the rate increase, and not the "reasonableness" standard of subdivision (b)(1) of this section. City of Lamar v. City of Clarksville, 314 Ark. 413, 863 S.W.2d 805 (1993).

Cited: Mount Olive Water Ass'n v. City of Fayetteville, 313 Ark. 606, 856 S.W.2d 864 (1993).

14-234-111. Service to adjacent areas — Municipalities generally.

(a) Any municipality in the State of Arkansas owning and operating a municipal waterworks system or a municipal sewer system or both may extend its service lines beyond its corporate limits for the purpose of giving water service, sewer service, or both, to adjacent areas where the demand for service is sufficient to produce revenues that will retire the cost of the service lines.

(b)(1) A municipality owning and operating a municipal water or sewer system, or both, without applying for a certificate of convenience and necessity, extend its water lines and sewer lines or both to serve the adjacent or nearby areas.

(2) In order to secure the funds with which to make the service line extension or extensions, the municipality may issue negotiable coupon bonds or interest-bearing certificates of indebtedness to be paid out of the net revenues derived from the operation of the services so extended and, for the payment of the bonds, may pledge not only the net revenues from the areas but also any unpledged revenues derived by the

municipality from the operation of either its water or sewer system, or both, that may be available from year to year in order to prevent a default in the payment of the revenue bonds issued for the extension beyond the corporate limits.

(c) The bonds or certificates of indebtedness authorized under this section shall be issued and sold under the provisions governing the issuance and sale of municipal water revenue bonds, as set out in subchapter 2 of chapter 234 of this title.

(d) Any municipality extending a service to an adjacent or nearby area shall have the power to fix the schedule of rates for services so extended.

(e) For the purpose of carrying out the provisions of this section, a municipality shall have the right of eminent domain as is provided in §§ 18-15-301—18-15-307.

(f) Nothing in this section shall be construed to require a municipality to extend either water or sewer service to adjacent or nearby areas.

History. Acts 1959, No. 288, §§ 1-6; A.S.A. 1947, §§ 19-4263 — 19-4268.

CASE NOTES

Authority to Extend Services.

The General Assembly fully intended to empower municipalities with authority to extend water and sewer services beyond their boundaries, but no one, including water commissions or sewer committees, can obligate a municipality to extend those services. City of Little Rock v. Chartwell Valley Ltd. Partnership, 299 Ark. 542, 772 S.W.2d 616 (1989).

Cited: City of Marion v. Baioni, 312 Ark. 423, 850 S.W.2d 1 (1993).

14-234-112. Service to adjacent areas — Cities of the second class.

Cities of the second class now owning a waterworks system are authorized and empowered to purchase, construct, own, and maintain water supply lines to the city limits of any adjacent city or town where the latter city or town agrees to purchase water under contract from the supplying city.

History. Acts 1959, No. 184, § 1, A.S.A. 1947, § 19-4269.

14-234-113. Service to other municipalities.

Municipal corporations, upon approval by resolution of their governing bodies, may make and enter into contracts whereby one (1) municipal corporation shall construct and maintain a water system for, and supply water to, another municipal corporation.

History. Acts 1963, No. 146, § 1; A.S.A. 1947, § 19-4270.

14-234-114. Payments from water revenues in lieu of taxes.

(a) The operating authority of any municipal waterworks system which was constructed or acquired pursuant to the authority contained in subchapter 2 of chapter 234 of this title shall have discretion to make payments from water revenues to the general fund of the municipality, in lieu of taxes, in return for police, fire, and health protection and in return for administrative and other services furnished the waterworks system by the municipality.

(b) The payments, if made, shall be an operation and maintenance expense of the waterworks system.

(c) In any calendar year, the payments authorized by this section shall not exceed the total of the following:

(1) A sum equal to five percent (5%) of gross income from water sales during the preceding calendar year; plus

(2) A sum equal to the amounts the municipality would have received from the waterworks system as property taxes for the preceding calendar year if the waterworks system's property had been privately owned and subject to tax by the municipality. For the purpose of this computation, the waterworks property shall be deemed to have an assessed value equal to twenty percent (20%) of book value as reflected by the waterworks system's usual accounting procedures.

(d) The payments shall be discretionary with the operating authority of the waterworks system and shall not be mandatory.

(e) Nothing contained in this section shall be construed as authorizing payments in violation of any trust indenture executed by municipalities to secure waterworks revenue bondholders. It shall be permissible for such indentures to limit or prohibit the payments authorized in this section.

(f) The payments authorized in this section shall not be made unless the municipality maintains water rates sufficient to provide the operating authority's estimated cost of operating and maintaining the waterworks system and sufficient to pay all other items specified in § 14-234-214.

History. Acts 1965, No. 50, §§ 1-4; A.S.A. 1947, §§ 19-4273 — 19-4276.

CASE NOTES

Privilege Tax Levied on Waterworks.

Privilege tax levied by city on waterworks commission was an unauthorized tax, and, therefore an illegal exaction, where: (1) the assessment was not a charge for services rendered to the waterworks, since those services are paid for in lieu of taxes pursuant to this section and are discretionary with the operating authority, while, conversely, the tax was mandatory and in a set amount, and the ordinances provided that "the taxes hereby levied shall be paid in addition to any sums paid by the Little Rock Municipal Waterworks under the provisions of Act 50 of 1965"; (2) under § 14-234-214, all other payments by a waterworks to a municipality which come from water rates must come from surplus accumulated in the operation fund only after taking into account the cost of operations and maintenance, allowing for replacement costs

and depreciation, providing for interest redemption and the purchasing of all outstanding bonds, whereas the tax in question, originally at 25 cents per meter, was levied on the waterworks and passed on to the customer and then paid by the customer and passed directly back to the city without regard to the cost of operations, maintenance, depreciation, and debt so that it was not a part of the water rate; and (3) the assessment was designated a privilege tax by the ordinances. City of Little Rock v. Cash, 277 Ark. 494, 644 S.W.2d 229 (1982), cert. denied, 462 U.S. 1111, 103 S. Ct. 2464, 77 L. Ed. 2d 1344 (1983).

Cited: City of Lamar v. City of Clarksville, 314 Ark. 413, 863 S.W.2d 805 (1993).

14-234-115. Water impoundments in other counties — Payment in lieu of taxes.

(a) Cities of the first class owning a water impoundment in excess of one thousand two hundred fifty (1,250) acres in a county other than the county in which the city is located shall pay to the school districts wherein their water impoundments are located, in lieu of property tax on the water impoundments, an annual amount equal to the property taxes the cities would pay to such school districts were their water impoundments not exempt from property taxation.

(b) It is declared to be the intent of the General Assembly to afford school districts located in counties where there is no corresponding benefit from the water impoundment a means of recovering lost revenues due to the impoundment.

History. Acts 1981, No. 985, §§ 1, 2; A.S.A. 1947, §§ 19-4277, 19-4277.1.

Publisher's Notes. Acts 1981, No. 985 became law without the Governor's signature and was noted by the Governor on March 31, 1981.

Cross References. Property exempt from taxation, § 26-26-1001 et seq.

14-234-116. Waterworks and sewer commission.

(a) Any city of the first or second class operating its municipal waterworks through a waterworks commission, by passage of a municipal ordinance, may authorize the waterworks commission to function as a waterworks and sewer commission.

(b) Waterworks and sewer commissions created pursuant to the authority granted in this section shall retain all powers now granted to waterworks commissions and, in addition, shall have all the powers granted to sewer committees by §§ 14-235-206 and 14-235-207 and all the powers granted to sanitary boards by § 14-235-209.

(c) It is the express purpose of this section to permit cities of the first and second class to operate their waterworks and sewer systems through a single commission.

History. Acts 1957, No. 129, §§ 1-3; A.S.A. 1947, §§ 19-4260 — 19-4262.

14-234-117. Return of dedicated property.

(a) Any water improvement district or any municipality that has paid for the construction of water pipelines and other portions of the infrastructure of a water system used by the district or municipality and has dedicated the property to the use of another municipality shall be entitled to the return of the property located within its boundaries by a vote of a majority of the board of directors of the water improvement district or the governing body of the municipality.

(b) The property shall be returned without charge except for cost reimbursement for repairs that have been made to the water pipelines and other portions of the infrastructure of the water system.

(c) The provisions of this section shall apply only to municipalities and improvement districts within counties having a population of two hundred thousand (200,000) or more according to the most recent decennial census.

History. Acts 1989, No. 900, §§ 1, 2.

Cross References. Water and soil improvement districts, § 14-114-101 et seq.

14-234-118. No abrogation of existing contracts — Exception.

(a) As used in this section:

(1) The term "utility service" shall mean utility service of municipally owned water utilities and shall not mean utility service of municipally owned electric utilities, municipally owned natural gas utility systems, or consolidated municipal utility improvement districts;

(2) The term "abrogate" means to cancel, invalidate, nullify, annul, void, revoke, rescind, deny, repudiate, or otherwise terminate or refuse to honor.

(b) The provisions of this section shall not apply to contracts between a municipality within this state and an entity or entities located outside the boundaries of this state.

(c)(1) The governing body of a municipality shall have no authority, by ordinance or otherwise, to abrogate an existing contract to furnish water utility service to residents in an area outside the boundaries of the municipality unless provided for by mutual agreement of all parties involved. Provided, nothing herein shall be construed to prohibit or restrict the authority of the governing body of a municipality to revise a revision of the rates to be charged water utility users in an area outside the boundaries of the municipality if circumstances arise which justify a revision in such rates or charges.

(2) Provided further, nothing herein shall be construed to prohibit or restrict the authority of a municipality to enforce payment of utility bills by disconnecting utility service and terminating contracts to furnish utility service.

(d) Nothing contained in this section shall require a municipally owned water utility to extend new service under existing water supply contracts outside its corporate limits or continue service under existing

water supply contracts outside its corporate limits, if, in the opinion of the municipally owned water utility, such extension or continuance of service would be an engineering or financial impracticality, affect the reliability or quality of service to customers served under such extension or continuance, or affect the reliability or quality of service to other customers of the municipally owned water utility.

History. Acts 1989, No. 930, §§ 1-4.

Publisher's Notes. Acts 1989, No. 930, § 5, provided that this act shall be effective January 1, 1990, and shall not apply to actions taken by municipalities with regard to territories or water customers within areas for which annexation procedures, whether voluntary or involuntary, commenced prior to the effective date of this act.

14-234-119. Annual audits.

(a) Any county, municipality, improvement district, or other entity receiving public funds or public grants that provides water or sewage services and having at least one hundred (100) service connections shall procure an annual financial audit of the system.

(b) Such audits shall be conducted following each system's fiscal year end and shall include a management letter.

(c) Each such entity shall choose and employ accountants, in good standing with the Arkansas State Board of Public Accountancy, to conduct these audits in accordance with Government Auditing Standards issued by the Comptroller General of the United States.

History. Acts 1997, No. 272, § 1.

14-234-120. Filing of audit report.

Copies of each audit report and the accompanying management letter shall be filed with the Division of Legislative Audit within one (1) year from the close of the fiscal year. The Division of Legislative Audit shall present the audit reports and accompanying management letters to the Legislative Joint Auditing Committee.

History. Acts 1997, No. 272, § 2.

14-234-121. Review of audit report by board.

Each audit report, with accompanying management letter, shall be reviewed by the appropriate board at the next regularly scheduled open meeting after receiving the audit report from the accountant.

History. Acts 1997, No. 272, § 3.

14-234-122. Penalty provision.

Any entity not complying with §§ 14-234-119 — 14-234-121 shall not be eligible to receive any funding or grants flowing through agencies of the State of Arkansas.

History. Acts 1997, No. 272, § 4.

Subchapter 2 — Purchase and Construction

SECTION.
14-234-201. Definitions.
14-234-202. Construction.
14-234-203. Authority of municipalities.
14-234-204. Authority of cities and towns — Use of revenues.
14-234-205. Ordinance for issuance of bonds — Contents.
14-234-206. [Repealed.]
14-234-207. Bonds — Amount — Negotiability — Execution — Sale.
14-234-208. Lien in favor of bondholders — Enforcement — Appointment of receiver upon default.
14-234-209. Accounts — Audit — Treasurer as custodian of fund — Fund separated from city funds.
14-234-210. Allocation of specific portion of issue of bonds to particular project.
14-234-211. Acceleration of maturities — Priorities between bond issues — Execution of indenture.
14-234-212. Issuance of bonds to construct improvements.
14-234-213. Exchange of unpaid water revenue certificates for refunding bonds.
14-234-214. Rates — Disposition of surplus funds.
14-234-215. Eminent domain.
14-234-216. Obligations incurred solely through sale of revenue bonds — Security in condemnation proceedings.
14-234-217. Bonds — Nature of indebtedness.
14-234-218. Bonds — Tax exemption.

Publisher's Notes. Section 23-1-102 provides, in part, that nothing in Acts 1935, No. 324 shall be construed as repealing this subchapter or any part thereof.

Effective Dates. Acts 1933, No. 131, § 20: approved Mar. 21, 1933. Emergency clause provided: "Whereas, there are various communities in this State which are seriously in need of improvements of the kind authorized by this act, the absence of which improvements results in such communities being deprived of pure water for drinking purposes and domestic use, as well as water for fire protection, which condition menaces the public health and safety; and

"Whereas, the passage of this act will create a means of immediately financing such works through emergency Government lending agencies which is not available under existing laws; and

"Whereas, the immediate construction of such works (which can be accomplished under this act with the aid of existing Government lending agencies) will not only relieve conditions jeopardizing the public health and safety, but will give employment to numerous citizens, thereby minimizing in some degree the prevailing conditions of unemployment attending the existing financial depression; and

"Whereas, there are now in use works (owned by others than municipalities) of the character authorized by this act which require immediate repairs, improvements and/or extension that can not be affected or accomplished because of the inability to finance same under existing laws, though the necessity for such repairs, improvements and extensions menaces the public health and safety; and this act provides a method whereby such works could be ac-

quired by municipalities, and the necessary repairs, improvements and/or extension promptly made;

"Therefore, it is hereby declared that an emergency exists, and that this act is necessary for the immediate preservation of the public peace, health and safety, and that this act will take effect, and be in force, from and after its passage."

Acts 1935, No. 3, § 3: approved Jan. 23, 1935. Emergency clause provided: "Whereas, there are various communities in this State, which are seriously in need of improvements of the kind authorized by this act, the absence of which improvements results in such communities being deprived of pure water for drinking purposes, and for domestic and industrial use, and fire protection, which condition menaces the public health and safety; and, whereas, the passage of this act will create a means of immediately financing such works through government emergency lending agencies, which is not available under existing laws.

"Therefore, it is hereby declared that an emergency exists, and that this act is necessary for the immediate preservation of the public peace, health and safety, and that this act shall take effect and be in force from and after its passage."

Acts 1935, No. 96, § 3: approved Mar. 2, 1935. Emergency clause provided: "Whereas, there are various communities in this State which are seriously in need of improvements of the kind authorized by this Act, the absence of which improvements results in such communities being deprived of pure water for drinking purposes and domestic use, as well as water for fire protection, which condition menaces the public health and safety; and

"Whereas, the passage of this act will create a means of immediately financing such works through emergency government lending agencies which is not available under existing laws; and,

"Therefore, it is hereby declared that an emergency exists, and that this act is necessary for the immediate preservation of the public peace, health and safety, and that this act will take effect and be in force from and after its passage."

Acts 1935, No. 107, § 3: approved Mar. 15, 1935. Emergency clause provided: "Whereas, there are various communities in this State which are seriously in need of improvements of the kind authorized by this act, the absence of which improvements results in such communities being deprived of pure water for drinking purposes, and for domestic and industrial use, and fire protection, which condition menaces the public health and safety; and, whereas, the passage of this act will create a means of immediately financing such works through government emergency lending agencies, which is not available under existing laws,

"Therefore, it is hereby declared that an emergency exists, and that this act is necessary for the immediate preservation of the public peace, health and safety, and that this act shall take effect and be in force from and after its passage."

Acts 1939, No. 135, § 4: approved Feb. 24, 1939. Emergency clause provided: "Whereas, there are various communities in this State which are seriously in need of improvements of the kind authorized by the act to which this act is an amendment, the absence of which improvements result in such communities being deprived of pure water for drinking purposes, and for domestic and industrial use and fire protection, which condition menaces the public health and safety; and whereas the passage of this act will create a more feasible means than is available under existing laws to finance such works immediately through government emergency lending agencies.

"Therefore, it is hereby declared that an emergency exists, and that this act is necessary for the immediate preservation of the public peace, health and safety, and that this Act shall take effect and be in force from and after its passage."

Acts 1943, No. 178, § 6: approved Mar. 6, 1943. Emergency clause provided: "It is ascertained and declared that because of the sudden growth of some of the cities and towns in the State, due to the present war, the waterworks systems owned by them, or those which they contemplate purchasing, do not provide a sufficient supply of pure water for the use of the inhabitants, and are greatly in need of additions and improvements thereto; that passage of this act will facilitate the construction of said additions and improvements and that a delay providing the improvements will endanger the health and lives of the inhabitants. It is, therefore, declared that an emergency exists, that this act is necessary for the preservation of the public peace, health, and safety,

and that this act shall take effect and be in force from and after its passage."

Acts 1955, No. 321, § 11: Mar. 21, 1955. Emergency clause provided: "It is found to be a fact that the proper operation, maintenance and improvement of many municipal waterworks systems are being hampered and delayed because of inadequate financing provisions under the existing law and because of inadequate rate-making authority, and the water supply of said municipalities is being seriously threatened and curtailed thereby, and an emergency is thereby created and is hereby declared, and this Act, being necessary for the immediate preservation of the public welfare, peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1957, No. 54, § 2: Feb. 18, 1957. Emergency clause provided: "It is hereby found and determined by the General Assembly that a number of cities located in counties of this State bordering other states have found it necessary, or may hereafter find it necessary, to acquire land or water supplies in such adjoining states in order to have a safe and satisfactory water supply for the inhabitants of said cities; and that the laws of this State do not now authorize cities to hold title to land so acquired or that it may be necessary to acquire in such adjoining states for municipal water purposes, and that the immediate passage of this Act is necessary to correct said situation and enable cities to acquire title or hold title heretofore acquired to such lands for municipal water purposes. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1970 (Ex. Sess.), No. 37, § 4: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this state and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this act. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1987, No. 87, § 5: Feb. 25, 1987. Emergency clause provided: "It is found and it is hereby declared by the General Assembly of the State of Arkansas that availability of financing of extraordinary expenses or liabilities of municipalities arising from their ownership and operation of municipal waterworks systems is essential to the continued operation of adequate water facilities by municipalities in this State, without which the life, health and safety of the inhabitants of

this State are endangered. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety shall be in effect upon its passage and approval."

RESEARCH REFERENCES

Ark. L. Rev. Municipal Improvement Bonds in Arkansas, 8 Ark. L. Rev. 146.

Comment, Municipal Bonds and Amendment 62: Clearing Up a Serbonian Bog, 39 Ark. L. Rev. 499.

CASE NOTES

Constitutionality.

This subchapter is constitutional except as to § 14-234-218, exempting bonds from taxation. Snodgrass v. City of Pocahontas, 189 Ark. 819, 75 S.W.2d 223 (1934).

14-234-201. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Municipality" means any city of the first or second class or incorporated town in the State of Arkansas;

(2) "Waterworks system" means and includes a waterworks system in its entirety, or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pumping tanks, intakes, wells, impounding reservoirs, or purification plants.

History. Acts 1933, No. 131, § 2; 1935, No. 96, § 1; Pope's Dig., § 10001; Acts 1939, No. 135, § 1; 1957, No. 54, § 1; A.S.A. 1947, § 19-4202.

CASE NOTES

Cited: City of Little Rock v. Chartwell Valley Ltd. Partnership, 299 Ark. 542, 772 S.W.2d 616 (1989).

14-234-202. Construction.

(a) This subchapter shall be construed as cumulative authority for the purchase or construction of a waterworks system or for the construction of betterments and improvements thereto and shall not be construed to repeal any existing laws with respect thereof.

(b)(1) This subchapter shall, without reference to any other statute, be deemed full authority for the construction, acquisition, improvement, equipment, maintenance, operation, and repair of the works provided for in this subchapter and for the issuance and sale of the bonds by this subchapter authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof.

(2) No petition or election, or other or further proceeding, in respect to the construction or acquisition of the works or to the issuance or sale of bonds under this subchapter and no publication of any resolution,

ordinance, notice, or proceeding relating to the construction or acquisition or to the issuance or sale of the bonds shall be required except as prescribed by this subchapter, any provisions of other statutes of the state to the contrary notwithstanding.

(3) All functions, powers, and duties of the Department of Health shall remain unaffected by this subchapter.

(c) This subchapter being necessary for the public health, safety, and welfare, it shall be liberally construed to effectuate its purposes.

History. Acts 1933, No. 131, §§ 2, 13, 14; 1935, No. 96, § 1, Pope's Dig., §§ 10001, 10012, 10013; Acts 1939, No. 135, § 1; 1957, No. 54, § 1, A.S.A. 1947, §§ 19-4202, 19-4213, 19-4214.

14-234-203. Authority of municipalities.

(a) Municipalities are authorized to purchase or construct a waterworks system or any integral part thereof and to purchase and hold title to, lease, or rent in connection therewith any land, lake, watercourse, or water supply either inside or outside the limits of the municipality or inside or outside the limits of the county in which the municipality is located.

(b)(1) In any municipality located in a county, the border line of which adjoins any other state, the municipality may take title to or lease or rent any land, lake, watercourse, or water supply outside this state.

(2) The ownership or lease of any land, lake, watercourse, or water supply located outside this state which has been acquired by any municipality previous to the passage of this subchapter is declared to be a valid exercise of the power of the municipality and shall remain in effect the same as if the acquisition by purchase or lease thereof had been made after the passage of this subchapter.

(c) Municipalities are authorized to construct a waterworks system or any integral part thereof either inside or outside the limits of the county in which the municipality is located.

(d) A municipality constructing a waterworks system or integral part thereof may sell the water to private consumers located inside and outside of the municipality. It may sell a part of the water to an improvement district, or it may sell the water or a part of it to a private corporation engaged in the business of selling water to private consumers in the municipality.

(e) Nothing in this section shall authorize any city or improvement district to sell its existing plant to a private corporation.

History. Acts 1933, No. 131, § 2; 1935, No. 96, § 1; Pope's Dig., § 10001; Acts 1939, No. 135, § 1; 1957, No. 54, § 1; A.S.A. 1947, § 19-4202.

Publisher's Notes. With reference to the term "the passage of this subchapter," Acts 1933, No. 131 was signed by the Governor on March 21, 1933, and became effective on that date.

CASE NOTES

ANALYSIS

Furnishing of water.
Limits of systems.
Obtaining water supplies.
Ultra vires undertakings.

Furnishing of Water.

Under their delegated powers, municipal corporations are under obligation to protect the comfort and well-being of their citizens by furnishing pure water. Bourland v. City of Ft. Smith, 190 Ark. 289, 78 S.W.2d 383 (1935).

Limits of Systems.

Municipal corporations have the authority to extend water mains beyond the corporate limits to obtain an adequate water supply, or may obtain an outlet for sewage beyond the corporate limits. Mathers v. Moss, 202 Ark. 554, 151 S.W.2d 660 (1941).

Obtaining Water Supplies.

A city is authorized to purchase a water supply for distribution to its inhabitants from another city or any other source. McGehee v. Williams, 191 Ark. 643, 87 S.W.2d 46 (1935).

Ultra Vires Undertakings.

Proposed undertaking by municipality to buy a water system and go into the business of operating and selling water service to three other municipalities was ultra vires. Yancey v. City of Searcy, 213 Ark. 673, 212 S.W.2d 546 (1948).

14-234-204. Authority of cities and towns — Use of revenues.

(a) Any city or incorporated town in the State of Arkansas may purchase or construct a waterworks system, or construct betterments and improvements to its waterworks system, or to a system owned by a waterworks district and operated by the city or town, as provided in this subchapter.

(b) Any city operating a waterworks system owned, constructed, or acquired by a waterworks district is authorized to use the revenue derived from operating the waterworks system in paying revenue bonds and the interest on the bonds issued under and pursuant to the terms of this subchapter, and, for that purpose may create a sinking fund, and other items prescribed by this subchapter, operating expenses, and maintenance and improvement of the existing system owned by the district. The balance of the revenue remaining shall be paid by the city to the district to be used in retiring obligations of the district.

History. Acts 1933, No. 131, § 1, 1935, No. 3, § 1; Pope's Dig., § 10000; A.S.A. 1947, § 19-4201.

Cross References. General authority to acquire or construct waterworks, § 14-54-702.

Local government reserve funds, § 14-73-101 et seq.

Water, sewer, and solid waste management systems financing, § 14-230-101 et seq.

CASE NOTES

ANALYSIS

Construction, etc., of systems.
Profits.

Construction, etc., of Systems.

A city is authorized to enter into a contract with a waterworks district to construct a reservoir for impounding water to be taken from a new source and to issue bonds to be paid by withholding sufficient revenue to pay the bonds. Bourland v. City of Ft. Smith, 190 Ark. 289, 78 S.W.2d 383 (1935).

Ordinance providing for issuance of revenue bonds under authority of this section to obtain funds for extension of city's wa-

terworks system and also of sewage system was not valid. Mathers v. Moss, 202 Ark. 554, 151 S.W.2d 660 (1941).

This section contemplates that the revenue bonds authorized to construct waterworks shall be paid from the revenues derived from that system, and nothing in this section authorizes any part of the revenue derived from the system to be devoted and appropriated to pay the cost of construction or operation of sewer system. Mathers v. Moss, 202 Ark. 554, 151 S.W.2d 660 (1941).

Profits.

A municipality may use profits above operating expense and maintenance costs of waterworks system for purposes not related to the system. Mathers v. Moss, 202 Ark. 554, 151 S.W.2d 660 (1941).

Cited: City of Little Rock v. Cash, 277 Ark. 494, 644 S.W.2d 229 (1982).

14-234-205. Ordinance for issuance of bonds — Contents.

(a) Whenever the legislative body of any municipality shall determine to purchase or construct a waterworks system under the provisions of this subchapter, it shall cause an estimate to be made of the cost thereof, and shall, by ordinance, provide for the issuance of revenue bonds under the provisions of this subchapter.

(b)(1) The ordinance shall set forth a brief description of the contemplated improvement, the estimated cost thereof, the amount and rate of interest, the time and place of payment, and other details in connection with the issuance of the bonds.

(2) The bonds shall bear interest as the ordinance authorizing their issuance may provide, payable semiannually, and shall be payable at any times and places not exceeding forty (40) years from their date as shall be prescribed in the ordinance providing for their issuance.

(3) The ordinance shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired or constructed, fix the minimum rate or rates for water to be collected prior to the payment of all of the bonds, and pledge the revenues derived from the waterworks system for the purpose of paying the bonds and interest thereon.

(4) The pledge shall definitely fix and determine the amount of revenue which shall be necessary to be set apart and applied to the payment of the principal of and interest on the bonds and the proportion of the balance of the revenues and income which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper operation thereof.

(c) The rates to be charged for the services from the waterworks shall be sufficient to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal as and when they become due, to provide for the operation and maintenance of the system, and to provide an adequate depreciation fund.

History. Acts 1933, No. 131, § 3; 1935, No. 96, § 2; Pope's Dig., § 10002; Acts 1970 (Ex. Sess.), No. 37, § 1, 1975, No. 225, § 12; 1981, No. 425, § 12; A.S.A. 1947, § 19-4203.

Cross References. Local Government Bond Act of 1985, § 14-164-301 et seq.

CASE NOTES

Authority.

When the board of public utilities determines to enlarge the water or sewer system, and they advise the town council, the town council has the sole and exclusive authority to issue bonds for the payment of the proposed improvements. Portis v. Board of Pub. Utils., 213 Ark. 201, 209 S.W.2d 864 (1948).

14-234-206. [Repealed.]

Publisher's Notes. This section, concerning the publication or posting of ordinances, was repealed by Acts 1993, No. 295, § 1. The section was derived from Acts 1933, No. 131, § 4; Pope's Dig., § 10003; A.S.A. 1947, § 19-4204.

14-234-207. Bonds — Amount — Negotiability — Execution — Sale.

(a) Bonds shall be issued in such amounts as may be necessary to provide sufficient funds to pay all costs of construction or acquisition, including engineering, legal, and other expenses, together with interest to a date six (6) months subsequent to the estimated date of completion.

(b) Bonds issued under the provisions of this subchapter are declared to be negotiable instruments.

(c) They shall be executed by the presiding officer and clerk or recorder of the municipality and be sealed with the corporate seal of the municipality. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before delivery of the bonds, the signature shall nevertheless be valid and sufficient for all purposes the same as if the officers had remained in office until delivery.

(d) The bonds may be sold at not less than ninety cents (90¢)on the dollar. The proceeds derived therefrom shall be used exclusively for the purposes for which the bonds are issued. Bonds may be sold at one time or in parcels as funds are needed.

History. Acts 1933, No. 131, § 5; Pope's Dig., § 10004; A.S.A. 1947, § 19-4205.

CASE NOTES

Cited: Ringgold v. Bailey, 193 Ark. 1, 97 S.W.2d 80 (1936).

14-234-208. Lien in favor of bondholders — Enforcement — Appointment of receiver upon default.

(a)(1) There shall be created a statutory mortgage lien upon the waterworks system acquired or constructed from the proceeds of bonds authorized to be issued.

(2) The lien shall exist in favor of the holder of the bonds, and each of them, and to and in favor of the holder of the coupons attached to the bonds.

(3) The waterworks system shall remain subject to the statutory mortgage lien until payment in full of the principal and interest of the bonds.

(b) Subject to whatever restrictions may be contained in the indenture authorized in this subchapter, any holder of bonds issued under the provisions of this subchapter or of any coupons representing interest accrued thereon may, either at law or in equity, enforce the statutory mortgage lien and may, by proper suit, compel the performance of the duties of the officials of the issuing municipality set forth in this subchapter.

(c) If there be default in the payment of the principal of or interest upon any of the bonds, any court having jurisdiction in any proper action may appoint a receiver to administer the waterworks system on behalf of the municipality with power to charge and collect rates sufficient to provide for the payment of the bonds and interest thereon, and for the payment of the operating expenses and to apply the income and revenues in conformity with this subchapter and the ordinance providing for the issuance of the bonds.

History. Acts 1933, No. 131, § 7; Pope's Dig., § 10006; A.S.A. 1947, § 19-4207.

14-234-209. Accounts — Audit — Treasurer as custodian of fund — Fund separated from city funds.

(a) Any municipality issuing revenue bonds under the provisions of this subchapter shall install and maintain a proper system of accounts showing the amount of revenue received and the application of the revenue.

(b) The municipality shall at least once a year cause the accounts to be properly audited by a competent auditor. The report of the audit shall be open for inspection at all proper times to any taxpayer, water user, or any holder of bonds issued under the provisions of this subchapter, or anyone acting for and on behalf of such taxpayer, water user, or bondholder.

(c) The treasurer of the municipality shall be custodian of the funds derived from income received from waterworks systems acquired or constructed either in whole or in part under the provisions of this subchapter and shall give proper bond for the faithful discharge of his duties as custodian. The bond shall be fixed and approved by the legislative body of the municipality.

(d)(1) All of the funds received as income from a waterworks system acquired or constructed in whole or in part under the provisions of this subchapter and all funds received from the sale of revenue bonds issued to acquire or construct a waterworks system shall be kept separate and apart from the other funds of the city.

(2) The treasurer shall maintain separate accounts in which shall be placed the interest and sinking fund moneys and another account in

which shall be placed the depreciation funds, all to provide for refunding outstanding certificates payable out of water revenue.

History. Acts 1933, No. 131, § 11; Pope's Dig., § 10010; A.S.A. 1947, § 19-4211.

14-234-210. Allocation of specific portion of issue of bonds to particular project.

(a) Any specified portion of the proceeds of an issue of bonds authorized under this subchapter may be allocated by the municipal council to any particular project or to new construction as distinguished from the purchase of works already constructed.

(b)(1) After allocation, the designated portion of the proceeds of the bond issue shall be kept separate and apart from the remaining proceeds and shall be held by the municipality in trust for the performance of the purposes specified, and none other.

(2) The diversion of funds to any other purpose may be enjoined on the suit of the trustee under the indenture, if any, accompanying the bonds, on the suit of any of the bondholders, or on the suit of any person whose property, under the ordinance of the council, is to be served by the proposed works.

(c) In making the allocation, the municipal council will be controlled by the engineer's estimate of cost referred to in the initial ordinance.

(d)(1) In the event of allocation of proceeds, the bonds themselves may be similarly and correspondingly segregated and allocated to the respective purposes of the issue.

(2) Bonds segregated and allocated to one (1) purpose, from the standpoint of legality and in all other respects, shall be deemed to have been issued to finance that purpose, and that alone.

(3) Notwithstanding the allocation and segregation, and unless the initial ordinance or the indenture accompanying the bonds shall provide to the contrary, all bonds of the entire issue will be secured ratably and equally by the revenues of the entire and aggregate works financed by the bond issue.

(4) Unless the ordinance or indenture shall so specifically provide, the allocation of bond proceeds or segregation of bonds will never have the effect of allocating the revenues from any particular portion of the authorized works exclusively to any particular bond or bonds.

History. Acts 1933, No. 131, § 16; Pope's Dig., § 10015; A.S.A. 1947, § 19-4215.

14-234-211. Acceleration of maturities — Priorities between bond issues — Execution of indenture.

(a) The ordinance authorizing the issuance of the revenue bonds may contain provisions for the acceleration of the maturities of all unmatured bonds in the event of default in the payment of any principal or interest maturing under the bond issue, or upon failure to meet any sinking fund requirements, or in any other event stipulated in the ordinance. Such provisions will be binding.

(b) The priorities as between successive issues of revenue bonds may also be controlled by the provisions of the ordinance.

(c) The ordinance may also, if deemed desirable, provide for the execution, contemporaneously with the execution of bonds, by the municipality of an indenture:

(1) Defining the rights of the bondholders inter sese;

(2) Appointing a trustee for the bondholders, which trustee may be a domestic or foreign corporation;

(3) Vesting in the trustee, to such extent as is deemed advisable, all rights of action under the bonds;

(4) Providing for the priority of lien as between successive bond issues;

(5) Providing for the acceleration of bond maturities;

(6) Containing any covenants on the part of the municipality relating to the construction or acquisition of the works, the application or safeguarding of the proceeds of the bonds, or other covenants intended for the protection of the bondholders; and

(7) Containing any other provisions, whether similar or dissimilar to the foregoing, which are consistent with the terms of this subchapter and which may be deemed desirable.

History. Acts 1933, No. 131, § 17; Pope's Dig., § 10016; A.S.A. 1947, § 19-4216.

CASE NOTES

Additional Bonds.

Where 1956 open end indenture authorized the issuance of additional bonds on a parity with the 1956 series, provision that "before such additional bonds may be issued there must be revenues amounting to a gross of 200% and a net of 130% of the revenues needed to make the payments on the outstanding indebtedness" was proper for the protection of both the city and the purchasers of the bonds. Du Val v. City of Little Rock, 227 Ark. 612, 300 S.W.2d 19 (1957).

14-234-212. Issuance of bonds to construct improvements.

(a)(1) If any municipality shall own or operate a waterworks system, whether or not purchased or constructed under the provisions of this subchapter, and shall desire to construct improvements, extensions, or betterments thereto, it may issue revenue bonds under the provisions of this subchapter to provide funds for those purposes. However, if the

municipality deems that it has sufficient funds to construct the proposed improvements without borrowing, then it shall not be necessary to issue revenue bonds to pay for the proposed improvements.

(2) A municipality may also issue revenue bonds under the provisions of this subchapter to provide funds to pay extraordinary expenses or liabilities arising from the ownership and operation of its waterworks system including, without limitation, liabilities to customers of the waterworks system for charges collected for services of the system.

(b)(1) The procedure for the issuance of bonds and the fixing of rates shall be the same as in this subchapter provided for the issuance of bonds for the acquisition or construction of a waterworks system in a municipality which has not theretofore owned and operated a waterworks system.

(2) In the ordinance declaring the intention to issue bonds and providing details in connection therewith, the legislative body shall either:

(A) Provide, find, and declare, in addition to the other requirements set out in this subchapter, the value of the then-existing system and, in the case of financing betterments and improvements, the value of the property proposed to be constructed and that the revenues derived from the entire system when the contemplated betterments and improvements are completed shall be divided according to such values and that so much of the revenue as is in proportion to the value of the betterments and improvements as against the value of the previously existing plant as so determined shall be set aside and used solely and only for the purpose of paying the revenue bonds issued for the betterments and improvements, together with the cost of operation, maintenance, and depreciation thereof, and the revenues shall be deemed to be income derived exclusively from the betterments and improvements; or

(B) Provide that there shall be set aside and used solely and only for the purpose of paying revenue bonds issued:

(i) For the betterments and improvements, together with the cost of depreciation, maintenance, and operation thereof; or

(ii) For extraordinary expenses or liabilities all or any part of the surplus in the bond and interest redemption account referred to in § 14-234-214.

(3) For the purpose of allocating revenues, the book value of the existing system may be deemed to be the value of the existing system.

History. Acts 1933, No. 131, § 10; 1935, No. 107, § 1; Pope's Dig., § 10009; Acts 1939, No. 135, § 2; 1943, No. 178, § 2; 1955, No. 321, § 4; A.S.A. 1947, § 19-4210; Acts 1987, No. 87, § 1.

Publisher's Notes. As to validation of prior bond issues, see Acts 1943, No. 178, § 3.

Acts 1987, No. 87, § 2, provided that it is the purpose of this act to enable municipalities to issue revenue bonds to finance extraordinary expenses or liabilities arising from the ownership and operation of municipal waterworks systems, and these purposes were declared by the General Assembly to be public purposes for which revenue bonds may be issued under Ark. Const. Amend. 65.

CASE NOTES

Analysis

In general.
Combining of bonds.
Redemption.
Valuation of waterworks.

In General.

Where city, which owned its water supply system, was growing rapidly and there was an urgent need for expanding and improving water supply, the city council could authorize the issuance of revenue bonds to raise money for the purpose. Du Val v. City of Little Rock, 227 Ark. 612, 300 S.W.2d 19 (1957).

Combining of Bonds.

Refunding bonds and construction bonds may be combined in one issue. Du Val v. City of Little Rock, 227 Ark. 612, 300 S.W.2d 19 (1957).

Redemption.

Where indenture permitted a redemption of bonds issued thereunder at specific periods upon payment of premium for such redemption and provided for a premium if city desired to redeem before maturity, the bonds being sold without privilege of conversion, the redemption premium allowed, coupled with the interest rate which the bonds would bear, did not exceed the rate of interest allowed by law. Du Val v. City of Little Rock, 227 Ark. 612, 300 S.W.2d 19 (1957).

Valuation of Waterworks.

Where city council had declared valuation of present waterworks system existing at the time of making new 1956 indenture, fact that all of the bonds that might be issued under the indenture in the future are not issued is of no consequence. Holders of 1936 bonds were amply protected with the valuation fixed. Purchasers of bonds under the 1956 indenture took with full knowlege of all of the provisions of that instrument. The 1936 bondholders were not entitled to more valuation than that existing at the time of the first bond issue subsequent to the 1936 issue. Additional value must be handled so as to produce revenues to retire subsequent issues. Du Val v. City of Little Rock, 227 Ark. 612, 300 S.W.2d 19 (1957).

14-234-213. Exchange of unpaid water revenue certificates for refunding bonds.

(a) Whenever all of the holders of unpaid water revenue certificates of a particular issue, which were issued to pay the cost of constructing a waterworks system and which are payable from the revenues thereof, shall offer in writing to exchange the certificates for refunding revenue bonds to be issued under the provisions of this subchapter, the legislative body shall receive the certificates, and if they are found to be properly executed, may adopt an ordinance incorporating therein the offer, setting forth the determined value of the entire waterworks system as it then exists, the value of so much of the system as was paid for by the issue of certificates, the unpaid portion of which is proposed to be refunded, and the details in connection with the issuance of the bonds in the same manner as is provided for in the issuance of revenue bonds. The municipality may fix the minimum rate or rates to be charged for water and pledge the revenues, if and when the refunding revenue bonds are issued, to pay the bonds.

(b) The revenues shall be applied as provided in this subchapter for revenue bonds and particularly §§ 14-234-212 and 14-234-214.

(c) The amount of refunding revenue bonds shall not exceed and may be less than the par amount of certificates to be surrendered and shall not exceed and may be less than the determined value of so much of the

systems as was paid for by the issue of certificates, less the amount of certificates paid.

(d)(1) The ordinance shall be published together with notice of hearing thereon in the same manner as is provided in this subchapter in case of the issuance of revenue bonds, and hearing shall be had thereon as is provided in this subchapter in case of the issuance of revenue bonds.

(2) After the hearing, the refunding revenue bonds may be issued, or a less amount thereof may be issued with the consent of the certificate holders, or the ordinance may be repealed, all as the legislative body shall determine.

(e) If the refunding revenue bonds are issued, the certificates shall be surrendered and cancelled simultaneously therewith.

(f) Refunding revenue bonds issued under the provisions of this subchapter shall be payable only out of the revenues derived from the system as provided in the ordinance and according to the terms of this subchapter.

(g) Holders of refunding revenue bonds issued under the provisions of this subchapter shall have similar rights as holders of revenue bonds issued under this subchapter, including the power to apply for a receiver to operate the system, and the municipality shall be under the same obligations to the bondholders as is provided to holders of revenue bonds issued under the provisions of this subchapter.

History. Acts 1933, No. 131, § 12; Pope's Dig., § 10011; A.S.A. 1947, § 19-4212.

14-234-214. Rates — Disposition of surplus funds.

(a) Rates for resident and nonresident consumers of a municipal waterworks system shall be fixed by the legislative body of the municipality.

(b) The rates to be charged by the municipality must be adequate to:

(1) Pay the principal of and interest on all revenue bonds and revenue promissory notes as they severally mature;

(2) Make such payments into a revenue bond sinking fund as may be required by ordinance or trust indenture;

(3) Provide an adequate depreciation fund and to provide the operating authority's estimated cost of operating and maintaining the waterworks system.

(c) Rates fixed prior to the issuance of revenue bonds or notes may be reduced if authorized by the trust indenture or ordinance pertaining to the issuance. The rates shall not be reduced below the standards prescribed in this subchapter.

(d) If a municipality subject to the provisions of this subchapter proposes to make additions to its system, which additions are to be financed by the issuance of revenue bonds or revenue promissory notes, within eighteen (18) months of the effective date of the rate, then the legislative body of the municipality shall fix a rate to be effective

immediately, which will be sufficient, in addition to the above requirements, to amortize the revenue bonds or revenue promissory notes with interest as they severally mature.

(e)(1) If any surplus is accumulated in the operation and maintenance fund of the waterworks system which shall be in excess of the operating authority's estimated cost of maintaining and operating the plant during the remainder of the fiscal year then-current and the cost of maintaining and operating the plant during the fiscal year next ensuing, the excess may be by the operating authority transferred to either the depreciation account or to the bond and interest redemption account, as the operating authority may designate.

(2) If any surplus is accumulated in the depreciation account over and above that which the operating authority shall find may be necessary for probable replacements needed during the then fiscal year, and the next ensuing fiscal year, the excess may be transferred to the bond and interest redemption account.

(3) If a surplus shall exist in the bond and interest redemption account, it may be applied by the operating authority, in its discretion, subject to any limitations in the ordinance authorizing the issuance of the bonds, or in the trust indenture:

(A) To the payment of bonds that may later be issued for additional betterments and improvements;

(B) To the purchase or retirement, insofar as possible, of outstanding unmatured bonds payable from the bond and interest redemption account, at no more than the fair market value thereof;

(C) To the payment of any outstanding unmatured bonds payable from the bond and interest redemption account that may be subject to call for redemption before maturity; or

(D) To any other municipal purpose.

History. Acts 1933, No. 131, § 8; Pope's Dig., § 10007; Acts 1943, No. 178, § 1; 1955, No. 321, § 3; A.S.A. 1947, § 19-4208.

CASE NOTES

Analysis

Bond obligations.
Debt service coverage.
Privilege tax levied on waterworks.

Bond Obligations.

Cities entering into contract with the water district were impliedly authorized to enter into an arrangement which did not provide for the reduction of rates during the life of the bonds, thus maintaining their rates at a sufficient level to meet their contract obligation. Hink v. Board of Dirs., 235 Ark. 107, 357 S.W.2d 271 (1962).

Debt Service Coverage.

The trial court did not err as a matter of law in holding that debt service coverage was a valid expense in the cost of performance of a contract, since this section provides that rates for resident and nonresident customers of a municipal waterworks system must be adequate to pay the principal and interest on all revenue bonds. City of Lamar v. City of Clarksville, 314 Ark. 413, 863 S.W.2d 805 (1993).

Privilege Tax Levied on Waterworks.

Privilege tax levied by city on waterworks commission was an unauthorized tax, and therefore an illegal exaction, where: (1) the assessment was not a

charge for services rendered to the waterworks, since those services are paid for in lieu of taxes pursuant to § 14-234-114 and are discretionary with the operating authority, while, conversely, the tax was mandatory and in a set amount, and the ordinances provided that "the taxes hereby levied shall be paid in addition to any sums paid by the Little Rock Municipal Waterworks under the provisions of Act 50 of 1965"; (2) under this section, all other payments by a waterworks to a municipality which come from water rates must come from surplus accumulated in the operation fund only after taking into account the cost of operations and maintenance, allowing for replacement costs and depreciation, providing for interest redemption and the purchasing of all outstanding bonds, whereas the tax in question, originally at 25 cents per meter, was levied on the waterworks and passed on to the customer and then paid by the customer and passed directly back to the city without regard to the cost of operations, maintenance, depreciation, and debt so that it was not a part of the water rate; and (3) the assessment was designated a privilege tax by the ordinances. City of Little Rock v. Cash, 277 Ark. 494, 644 S.W.2d 229 (1982), cert. denied, 462 U.S. 1111, 103 S. Ct. 2464, 77 L. Ed. 2d 1344 (1983).

14-234-215. Eminent domain.

(a) For the purpose of acquiring any lands or property for the operation of the municipal waterworks system authorized by law, a municipality shall have the right of eminent domain as provided in §§ 18-15-301 — 18-15-303.

(b) The municipality shall have the right by its agents or employees to peacefully enter upon any lands, structures, or rights-of-way to make surveys, tests, and measurements thereon, but is liable for any damage that may result by reason of its acts.

(c)(1) When a municipality by inadvertence has taken private property without the eminent domain procedure authorized by law or without the consent of the property owner, the municipality may file an application in the circuit court of the county in which the property is situated setting out the facts and praying that a jury be assembled to assess the amount the municipality should pay for the property so taken.

(2) Service of process or publication of notice shall be as provided in §§ 18-15-301 — 18-15-303.

History. Acts 1933, No. 131, § 9; Pope's Dig., § 10008; Acts 1955, No. 321, § 1; A.S.A. 1947, § 19-4209.

Cross References. Eminent domain by municipal corporations for waterworks systems, § 18-15-401 et seq.

CASE NOTES

Constitutionality.

This section is not violative of Ark. Const., Art. 5, § 23. Jernigan v. Harris, 187 Ark. 705, 62 S.W.2d 5 (1933).

Cited: Benton County Water Co. v. Cummings, 242 Ark. 67, 411 S.W.2d 890 (1967).

14-234-216. Obligations incurred solely through sale of revenue bonds — Security in condemnation proceedings.

No obligation may be incurred by the municipality in the construction or acquisition of the works contemplated by this subchapter or in the condemnation of property in connection therewith, except as shall be payable solely from the funds to be acquired from the sale of revenue bonds of the character authorized by this subchapter. In view of this provision, the court, in condemnation proceedings instituted under this subchapter by the municipality, may make such requirements of security as will serve to protect the landowner.

History. Acts 1933, No. 131, § 19; Pope's Dig., § 10017; A.S.A. 1947, § 19-4218.

14-234-217. Bonds — Nature of indebtedness.

(a) Bonds issued under the provisions of this subchapter shall be payable solely from the revenues derived from the waterworks system.

(b) The bonds shall not in any event constitute an indebtedness of the municipality within the meaning of the constitutional provisions or limitations.

(c) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter and that it does not constitute an indebtedness of the municipality within any constitutional or statutory limitation.

History. Acts 1933, No. 131, § 6; Pope's Dig., § 10005; A.S.A. 1947, § 19-4206.

14-234-218. Bonds — Tax exemption.

The revenue bonds shall be exempt from all taxation, state, county, and municipal. This exemption includes income taxation and inheritance taxation.

History. Acts 1933, No 131, § 18; A.S.A. 1947, § 19-4217.

CASE NOTES

Constitutionality.

As to constitutionality, Jernigan v. Harris, 187 Ark. 705, 62 S.W.2d 5 (1933); Snodgrass v. City of Pocahontas, 189 Ark. 819, 75 S.W.2d 223 (1934).

Subchapter 3 — Waterworks Commissions

SECTION.
14-234-301. Construction and applicability.
14-234-302. Creation of commission.
14-234-303. Ordinance — Qualifications of commissioners.
14-234-304. Appointment of commission-

SECTION.
ers — Term — Salaries — Oath.
14-234-305. Removal of commissioners.
14-234-306. Authority of commissioners to operate and manage waterworks system.
14-234-307. Further powers of commissioners — Donations to charitable organizations — Use of waterworks commission funds.
14-234-308. Vesting of control in commissioners.
14-234-309. Rules and regulations — Reports and audits.
14-234-310. Social security and retirement for employees of waterworks system in cities of the first class.

Cross References. Exemptions from civil service commission systems, §§ 14-49-301, 14-50-302.

Effective Dates. Acts 1941, No. 288, § 4: Mar. 26, 1941. Emergency clause provided: "It is hereby ascertained and declared that there is much suffering in the State which can be relieved through Community Chest and other charitable organizations. These organizations are badly in need of funds, and, this act being necessary for the preservation of the public peace, health and safety, an emergency is declared to exist, and this act shall become effective from and after its passage and approval."

Acts 1943, No. 45, § 2: Feb. 10, 1943. Emergency clause provided: "This act being necessary for the welfare, peace and health, an emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage and approval."

Acts 1945, No. 132, § 4: effective on passage.

Acts 1953, No. 413, § 2: Mar. 28, 1953. Emergency clause provided: "Whereas, the restriction imposed on members of municipal waterworks commissions constitutes a bar against citizens who are in a position to render a valuable service to the state and nation; and

"Whereas, no useful purpose is served by prohibiting such persons from serving on honorary boards and commissions,

"Now therefore, an emergency is hereby deemed to exist, and this act being necessary for the public peace, health and safety shall take effect and be in full force and effect from and after its passage and approval."

Acts 1981, No. 840, § 3: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law restricts waterworks commissions of first class cities to three (3) members; that first class cities having a population less than 100,000 persons should have the ability to increase their waterworks commissions to no more than five (5) members; and that this Act is immediately necessary to grant such authority. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1040, § 7: Apr. 12, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that confusion exists concerning the extent to which operation and maintenance funds of a water works commission may be utilized for chamber of commerce industrial development activities and community deterioration prevention activities because there is no express statutory language on the subject; that there now exists immediate opportunities for industrial development presented by the presidency of former Governor Clinton; that this act helps clarify the confusion and opens the door for opportunity. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

14-234-301. Construction and applicability.

(a) Nothing in this subchapter shall be construed as repealing any special act providing for a board of commissioners to administer and operate municipal waterworks, nor shall this subchapter apply to cities which have a commission form of government.

(b) This subchapter shall not alter, amend, or affect any indenture or obligation issued by any city prior to the passage of this subchapter.

History. Acts 1937, No. 215, § 9; Pope's Dig., § 10026; A.S.A. 1947, § 19-4228.

Publisher's Notes. Regarding "the passage of this subchapter," Acts 1937, No. 215 was signed by the Governor on March 8, 1937, and took effect on June 10, 1937.

CASE NOTES

Cited: City of Little Rock v. Chartwell Valley Ltd. Partnership, 299 Ark. 542, 772 S.W.2d 616 (1989).

14-234-302. Creation of commission.

Any city of the first or second class owning and operating a waterworks and distributing system, by appropriate action of its city council, may create a commission for the purpose of operating and managing the waterworks and distributing system.

History. Acts 1937, No. 215, § 1; Pope's Dig., § 10018; Acts 1943, No. 45, § 1; A.S.A. 1947, § 19-4219.

CASE NOTES

Cited: City of Little Rock v. Cash, 277 Ark. 494, 644 S.W.2d 229 (1982).

14-234-303. Ordinance — Qualifications of commissioners.

(a)(1)(A) Any city of the first class desiring to avail itself of the benefits of this subchapter, by a majority vote of the duly elected and qualified members of its city council, shall enact an ordinance creating a waterworks commission to be composed of no fewer than three (3) nor more than five (5) citizens who are qualified electors of the municipality.

(B) Any waterworks commission of a city of the first class having fewer than five (5) members may have its membership increased at any time to no more than five (5) members by ordinance of the city council passed by the majority vote of the duly elected and qualified members of the city council.

(2) In all cities of the first class having a mayor-council form of government and having a population of not less than fifty thousand (50,000) persons according to the most recent federal decennial census, the waterworks commission shall be composed of five (5) members to be

appointed and confirmed in the manner and to serve for the terms prescribed in this subchapter.

(b) Any city of the second class desiring to avail itself of the benefits of this subchapter shall, by a majority vote of the duly elected and qualified members of its city council, enact an ordinance creating a waterworks commission to be composed of not less than three (3) nor more than five (5) citizens who are qualified electors of the municipality.

History. Acts 1937, No. 215, § 2; Pope's Dig., § 10019; Acts 1953, No. 413, § 1; 1957, No. 166, § 1; 1975, No. 359, § 1; 1981, No. 840, § 1; A.S.A. 1947, §§ 19-4220, 19-4220.1, Acts 1995, No. 789, § 1.

Publisher's Notes. Acts 1975, No. 359, § 1, provided, in part, that in the case of any such city which has heretofore created a three-member waterworks commission as authorized in this subchapter, the members of the commission in office on July 9, 1975, should continue to serve the terms for which they were appointed, and their successors should be appointed in the manner and for the terms prescribed in this subchapter. The two members first selected to fill the two additional positions on the commission provided for in the act should be appointed by the mayor and confirmed by a two-thirds vote of the city council for terms of such duration as to assure that thereafter the terms of the five commissioners will expire in five successive years, with no two terms expiring during any one calendar year. All successor appointments to the commission in any such city should be made in the manner and for the terms prescribed in this subchapter.

Amendments. The 1995 amendment deleted (a)(3); redesignated former (a)(2) and (4) as (a)(1)(B) and (a)(2), respectively; substituted "no fewer than" for "no less than" in (a)(1)(A); in (a)(1)(B), deleted "having a population less than one hundred thousand (100,000) persons and" following "first class", and inserted "duly"; and substituted "cities of the first class" for "first-class cities" in present (a)(2).

14-234-304. Appointment of commissioners — Term — Salaries — Oath.

(a)(1) The commissioners shall be appointed by the mayor and confirmed by a two-thirds (⅔) vote of the duly elected and qualified members of the city council and shall hold office for a term of eight (8) years.

(2)(A) However, commissioners first appointed and confirmed shall serve for terms of four (4), six (6), and eight (8) years for a three—member commission, and for terms of two (2), four (4), six (6), seven (7), and eight (8) years for a five—member commission, each to be designated by the mayor and city council.

(B) Thereafter, and upon the expiration of their respective terms, their successors shall be appointed by the remaining commissioners subject to the approval of two-thirds (⅔) of the duly elected and qualified members of the city council for a term of eight (8) years.

(b)(1) If the membership of any waterworks commission of a city of the first class is increased pursuant to the provisions prescribed in this subchapter, the members selected to fill the additional positions following the increase in membership of the waterworks commission shall be appointed as vacancies are filled pursuant to subsection (d) of this section, for terms of such duration to assure that thereafter the terms

of the remaining commissioners will expire in successive years, with no two (2) terms expiring during any one (1) calendar year.

(2) All successor appointments to the waterworks commission shall be made in the manner and for the terms prescribed in this subchapter.

(c) The city council shall have authority to fix and prescribe the salaries to be paid to the commissioners.

(d) In the event of a vacancy occurring on the commission, it shall be filled in the following manner: The remaining commissioners will appoint a member, subject to the approval of two-thirds (⅔) of the duly elected and qualified members of the city council, to fill the vacancy.

(e) The commissioners shall file the oath of public officials required by law in the State of Arkansas.

History. Acts 1937, No. 215, § 3; Pope's Dig., § 10020; A.S.A. 1947, § 19-4221; Acts 1995, No. 789, § 2.

Amendments. The 1995 amendment rewrote (a)(2); inserted present (b), redesignating the remaining subsections accordingly; and made stylistic changes.

14-234-305. Removal of commissioners.

Any commissioner appointed by the provisions of this subchapter may be removed for cause upon a two-thirds (⅔) vote of the duly elected and qualified members of the city council.

History. Acts 1937, No. 215, § 4; Pope's Dig., § 10021; A.S.A. 1947, § 19-4222.

CASE NOTES

Analysis

Abolishment of commission.
Cause for removal.
Judicial review.
Notice and hearing.
Sufficiency of evidence.

Abolishment of Commission.

Whatever a municipal government may do by a majority vote, it may undo by majority vote, absent constitutional or statutory restrictions; accordingly, city council has authority to abolish city water and sewer commission by majority vote. City of Ward v. Ward Water & Sewer Sys., 280 Ark. 177, 655 S.W.2d 454 (1983).

If the city council, by a majority vote, attempted to abolish the commission simply as a pretext for the removal of one set of commissioners to be replaced by another, such a move would clearly be proscribed by this section. City of Ward v. Ward Water & Sewer Sys., 280 Ark. 177, 655 S.W.2d 454 (1983).

Cause for Removal.

Cause for removal means any act of commission or omission that, considered in its relation to the duty involved, would stamp the person in question as unfit to occupy the position — one whose conduct has become inimical to the public welfare. Williams v. Dent, 207 Ark. 440, 181 S.W.2d 29 (1944).

Whether member of waterworks commission had moved from the city so as to be subject to dismissal was a matter for city council's determination. Williams v. Dent, 207 Ark. 440, 181 S.W.2d 29 (1944).

Judicial Review.

On certiorari to review resolution of removal, the trial court has authority to determine only one question: Did the council have power, at the time it acted, and in the light of all testimony before it, to adopt the resolution of dismissal? Williams v. Dent, 207 Ark. 440, 181 S.W.2d 29 (1944).

Notice and Hearing.

Member of waterworks commission subject to removal for cause has right to statement of the cause, notice, and opportunity to defend, and these are in the nature of conditions precedent to the city council's exercise of power, and impairment thereof is not mitigated by the fact that in circuit court on certiorari proceeding evidence sufficient to sustain removal is heard. Williams v. Dent, 207 Ark. 440, 181 S.W.2d 29 (1944).

Where it appeared that waterworks commissioner charged with irregularities had a right to assume that matter had been dropped or that he would be notified before further action would be taken, city council had no power to adopt resolution of dismissal. Williams v. Dent, 207 Ark. 440, 181 S.W.2d 29 (1944).

Sufficiency of Evidence.

In proceeding for removal, the city council, in the first instance, determines the sufficiency of the evidence, while the circuit court examines the record to determine if such evidence was sufficient as a matter of law. Williams v. Dent, 207 Ark. 440, 181 S.W.2d 29 (1944).

14-234-306. Authority of commissioners to operate and manage waterworks system.

(a) The commissioners appointed under this subchapter shall have full and complete authority to manage, operate, improve, extend, and maintain the municipal waterworks and distribution system, and shall have full and complete charge of the plant, including the right to employ or remove any and all assistants and employees of whatsoever nature, kind, or character and to fix, regulate, and pay their salaries.

(b) It is the intention of this subchapter to vest in the commissioners unlimited authority to operate, manage, maintain, improve, and extend the municipally owned waterworks and distribution system and to have full and complete charge thereof.

(c) The commissioners shall not have authority or power to sell, mortgage, or encumber the waterworks and distribution system, unless it is done in accordance with the provisions of subchapter 2 of this chapter or when authorized by the mandate of an election called for that purpose.

History. Acts 1937, No. 215, § 5; Pope's Dig., § 10022; A.S.A. 1947, § 19-4223.

CASE NOTES

Analysis

Abolishment of commission.
Eminent domain.
Nonprofit corporations.

Abolishment of Commission.

City council has authority to abolish city water and sewer commission by majority vote. City of Ward v. Ward Water & Sewer Sys., 280 Ark. 177, 655 S.W.2d 454 (1983).

Eminent Domain.

This section does not confer on city water commissioners the power of eminent domain. City of Little Rock v. Sawyer, 228 Ark. 516, 309 S.W.2d 30 (1958).

Nonprofit Corporations.

Although a nonprofit corporation is not, strictly in name, a utility commission, it can perform the same duties as a commission in managing and operating a municipal waterworks. Conway Corp. v. Construction Eng'rs, Inc., 300 Ark. 225, 782

S.W.2d 36 (1989), cert. denied, 494 U.S. 1080, 110 S. Ct. 1809, 108 L. Ed. 2d 939 (1990).

Cited: Allen v. State, 327 Ark. 350, 939 S.W.2d 270 (1997).

14-234-307. Further powers of commissioners — Donations to charitable organizations — Use of waterworks commission funds.

(a)(1) The commissioners shall, in addition to the powers enumerated in § 14-234-306, have such other and further powers as are now by law given to the city council of any city.

(2) The commissioners shall be governed by all existing statutes pertaining to the duties of city councils.

(b)(1) The commissioners shall be authorized to make donations of money from the revenue of municipal waterworks systems to local community chests or other citywide nonsectarian, incorporated, charitable organizations.

(2) Any commissioner or commissioners making donations to local community chests or other organizations under the provisions of this section and § 14-42-108 shall not be liable for the penalty provided in § 14-42-108; nor shall they be personally liable by civil action because of any donation made to a local community chest or other organization under the provisions of this section. It is the purpose of this section to authorize such donations and to relieve the commissioners from any criminal or civil liability as a result of their official act in making the donation.

(c)(1) The General Assembly finds that payments to a chamber of commerce for industrial development activities or prevention of community deterioration are authorized payments within the board of commissioners' authority to manage and operate a waterworks and distribution system pursuant to this subchapter.

(2) A board of waterworks commissioners created pursuant to this subchapter may expend operation and maintenance funds of the waterworks for industrial development or community deterioration prevention activities conducted by a chamber of commerce or similar not-for-profit organization, if such activities in the judgment of the board of commissioners are likely to increase revenues of the waterworks or decrease expenditures resulting from system deterioration.

(3) It is not intended that this subsection should in anywise alter any authority that a board of waterworks commissioners has as of April 12, 1993.

History. Acts 1937, No. 215, § 6; Pope's Dig., § 10023; Acts 1941, No. 288, §§ 2, 3; A.S.A. 1947, §§ 19-4224, 19-4225; Acts 1993, No. 1040, §§ 1-3.

Amendments. The 1993 amendment added (c).

CASE NOTES

Contribution Not Allowed.

This section was held ineffective to authorize the city or the commissioner to make a binding subscription to a local community chest (now United Way) payable out of the waterworks revenues where this fund was pledged prior to the enactment of the amendatory act for payment of revenue bonds under trust indenture, since payment of the subscription would be a diversion of the security and an impairment of the obligation, legislature was without power to authorize the impairment of the contract, and the fact that revenue was amply sufficient to pay all obligations was immaterial. City of Little Rock v. Community Chest, 204 Ark. 562, 163 S.W.2d 522 (1942).

14-234-308. Vesting of control in commissioners.

(a) Upon the appointment of the commissioners as provided in this subchapter, the mayor and city council shall execute such instruments and enact measures as may be necessary to vest complete charge of the municipally owned waterworks and distributing system in the commissioners appointed under this subchapter.

(b) Upon their failure to do so, mandamus may be maintained against them, or any one of them, in any court of competent jurisdiction by any taxpayer of the city wherein is located the waterworks and distributing system in question.

History. Acts 1937, No. 215, § 8; Pope's Dig., § 10025; A.S.A. 1947, § 19-4227

CASE NOTES

Abolishment of Commission.

City council has authority to abolish city water and sewer commission by majority vote. City of Ward v. Ward Water & Sewer Sys., 280 Ark. 177, 655 S.W.2d 454 (1983).

14-234-309. Rules and regulations — Reports and audits.

(a) The commissioners shall adopt such rules and regulations as they may deem necessary and expedient for the proper operation and management of the municipal waterworks and distributing system and shall have authority to alter, change, or amend the rules and regulations at their discretion.

(b) They shall submit monthly reports and annual audits of operations to the mayor and city council and furnish other and further reports, data, and information as may be requested by the mayor or city council.

History. Acts 1937, No. 215, § 7; Pope's Dig., § 10024; A.S.A. 1947, § 19-4226.

14-234-310. Social security and retirement for employees of waterworks system in cities of the first class.

(a) In any city of the first class owning and operating waterworks and distribution systems by or through a board of waterworks commissioners created in compliance with this subchapter, the board of waterworks commissioners of the city may provide a plan for social security, old age pensions, and retirement pay for part or all of the employees of the waterworks system under such plan as the board of waterworks commissioners may provide.

(b) The plan may include payments from both the board of commissioners and the employees, or either of them and may be underwritten by a solvent insurance company or by a fund set up and maintained by the board of commissioners from the funds of the waterworks system, the employees, or both, or either of them.

(c) The board may also authorize its employees to participate in the Federal Old Age and Survivor's Insurance Program with the city's cost of contribution to constitute an operating expense of the waterworks system.

History. Acts 1945, No. 132, §§ 1, 2; 1955, No. 321, § 6; A.S.A. 1947, §§ 19-4229, 19-4230.

Subchapter 4 — Recreational Activities

SECTION.
14-234-401. Definition.
14-234-402. Penalty.
14-234-403. Injunctions.
14-234-404. Summons and prosecution for offense.
14-234-405. Recreational activities on lands and waters authorized — Exceptions.
14-234-406. Lease of property for recreational purposes.
14-234-407. Designation of warden.
14-234-408. Nonliability for torts of employees.
14-234-409. Disposition of fees, rentals, and income.

Effective Dates. Acts 1959, No. 204, § 13: approved Mar. 25, 1959. Emergency clause provided: "It is found to be a fact that the water supplies of many municipalities are being endangered by improper protection of the lakes, reservoirs and streams from which their water supply is taken; that recreational activity upon the lands and waters held for waterworks purposes will be of great benefit to the public health and welfare if adequate controls are provided; and an emergency is hereby created and is declared and this Act, being necessary for the immediate preservation of the public peace, health, safety and welfare, shall be in force from and after its passage."

14-234-401. Definition.

As used in this subchapter, unless the context otherwise requires, "operating authority" means either the legislative body or the board of commissioners, whichever is charged in a given instance with the responsibility of operating the municipal waterworks system.

History. Acts 1959, No. 204, § 2; A.S.A. 1947, § 19-4231.

14-234-402. Penalty.

The violation of this subchapter or of any rule or regulation adopted by the operating authority shall constitute a misdemeanor, and upon conviction the offender shall be fined not less than fifty dollars ($50.00) nor more than two hundred dollars ($200) for each offense.

History. Acts 1959, No. 204, § 8; A.S.A. 1947, § 19-4238.

Cross References. Authority to punish for pollution or injury to system, § 14-54-702.

14-234-403. Injunctions.

(a) Anything to the contrary in this subchapter notwithstanding, the State Board of Health may obtain an injunction restraining the operating authority from permitting a recreational activity if the rules and regulations adopted by the operating authority, or if the provisions of any lease granted by the operating authority do not adequately protect the water supply from pollution, or if the rules and regulations or the terms of any lease are not properly enforced by the operating authority.

(b) Any operating authority may obtain prohibitive and mandatory injunctions against any person, firm, or corporation polluting its water supply or refusing to obey lawful regulations adopted by the operating authority or the State Board of Health for the protection of any municipal water supply.

History. Acts 1959, No. 204, § 11; A.S.A. 1947, § 19-4238.2.

14-234-404. Summons and prosecution for offense.

(a) Wardens may issue a special summons returnable to the municipal court of the municipality owning the waterworks system. The summons shall specify the date of the offense and the law or the number of the rule or regulation violated.

(b) The original of the summons shall be retained by the warden. A copy shall be delivered to the offender and two (2) copies delivered to the clerk of the municipal court within ten (10) days after issuance of the summons.

(c) The clerk of the court shall insert the date of hearing on one (1) copy of the summons and the copy shall be served on the offender by

regular mail or may be served in person by the warden or by any other person authorized by law to serve processes.

(d) It shall be the duty of the prosecuting attorney of the county where the municipality is located to prosecute offenders.

History. Acts 1959, No. 204, § 7; A.S.A. 1947, § 19-4237.

14-234-405. Recreational activities on lands and waters authorized — Exceptions.

(a) The operating authority of any municipally owned waterworks system which maintains adequate controls against pollution shall have the authority to permit recreational activities upon the lands and waters owned by the municipality for waterworks purposes, to construct recreational facilities, to collect fees and rentals for permitting recreational activities, and to prescribe rules and regulations prohibiting, permitting, and governing recreational activities.

(1) The rules and regulations shall have the force and effect of any other laws of this state and shall be effective wherever the lands and waters are located.

(2) A copy of all rules and regulations, or amendments thereto, adopted by the operating authority shall be furnished to the State Board of Health within thirty (30) days after adoption.

(3) If the operating authority elects to permit hunting or fishing upon its premises, the laws of this state and the rules and regulations of the Arkansas State Game and Fish Commission governing hunting and fishing shall remain in full force and effect and may not be abrogated by the rules and regulations of the operating authority.

(b) Regardless of any rule or regulation adopted by the operating authority, it shall be unlawful for any person to wade, bathe, or swim in any lake or reservoir with a surface area of less than seven hundred (700) acres used by a municipality for its water supply, or to wade, bathe, or swim in that part of any nonnavigable stream located upon land belonging to the municipality which lies above the water intake or impounding dam owned by the municipality. However, the prohibition set forth in this subsection shall not apply to reservoirs whose water is diverted into a natural stream and flows by gravity down the stream three (3) or more miles before reaching the water intake of the municipality unless all of the land of the stream belongs to the municipality.

(c) It shall be unlawful for any unauthorized person to camp upon land not owned by him which is located above any impounding dam for the municipal water supply and within the drainage area of the reservoir, lake, or nonnavigable stream from which the water supply is taken. However, where any land adjoining the drainage area, reservoir, lake, or nonnavigable stream from which the water supply is taken is within the confines of any national forest reserve or national park, persons may camp upon the lands enclosed in the national forest

reserve or national park upon such terms and conditions as are or may be permitted by the rules and regulations governing the national forest reserves or national parks.

History. Acts 1959, No. 204, §§ 3-5; A.S.A. 1947, §§ 19-4232 — 19-4234.

CASE NOTES

Cited: Magruder v. Arkansas Game & Fish Comm'n, 293 Ark. 39, 732 S.W.2d 849 (1987).

14-234-406. Lease of property for recreational purposes.

(a) The operating authority may lease portions of its property for recreational purposes upon such terms as it deems advisable and may permit the lessee to construct upon the leased premises such recreational and merchandising facilities as the operating authority thinks proper.

(b) Public notice of intention to lease the premises shall be published at least one (1) time and at least two (2) weeks before the bid date, in a newspaper of general circulation in the county where the municipality is situated.

(c) The operating authority may reject all bids or may accept the bid which it believes most advantageous, bearing in mind the experience and financial resources of the bidder.

History. Acts 1959, No. 204, § 6; A.S.A. 1947, § 19-4235.

14-234-407. Designation of warden.

(a) Any employee of the operating authority may be designated as a warden.

(b) Wardens shall have the authority to arrest or apprehend any person whom they believe to have violated this subchapter, or the boating laws of this state, or the rules and regulations of the operating authority which are authorized in this subchapter, or the rules and regulations of the State Board of Health pertaining to protection of municipal water supplies, and may take the offender when apprehended before any court having jurisdiction of the offense. Wardens shall have no authority to make arrests for violation of the game and fish laws, rules, and regulations of this state.

History. Acts 1959, No. 204, § 7; A.S.A. 1947, § 19-4237.

14-234-408. Nonliability for torts of employees.

No municipality or operating authority permitting any activities authorized by this subchapter shall be liable for the torts of its servants, agents, or employees committed while acting within the scope of their employment in carrying out the duties assigned to them in connection with the aforesaid recreational activities.

History. Acts 1959, No. 204, § 10; A.S.A. 1947, § 19-4238.1.

14-234-409. Disposition of fees, rentals, and income.

All fees, rentals, or other income of any type derived by the operating authority as a result of the acts authorized in this subchapter may be treated as recreational income rather than as water revenues and may be used to defray the cost of providing or maintaining recreational facilities and providing for protection of the water supply against pollution because of recreational activities.

History. Acts 1959, No. 204, § 9; A.S.A. 1947, § 19-4236.

Subchapter 5 — Joint Systems

SECTION.
14-234-501. Definitions.
14-234-502. Construction.
14-234-503. Authority for joint undertaking.
14-234-504. Cost estimate — Contents of ordinances — Bonds.
14-234-505. Ordinances — Additional provisions.
14-234-506. Ordinances — Publication — Hearing.
14-234-507 Location of system — Sale of water — Ownership of distribution system.
14-234-508. Bond issue — Sufficiency — Negotiability — Sale — Fiscal agent.
14-234-509. Bonds — Nature of indebtedness.
14-234-510. Obligation payable from revenue bonds only — Security in condemnation proceedings.
14-234-511. Allocation of bond proceeds.
14-234-512. Bonds — Tax exemption.
14-234-513. Fixed rate reduction prohibited — Exception — Surpluses.
14-234-514. Deposit of funds.
14-234-515. Statutory mortgage lien — Default.
14-234-516. Eminent domain.
14-234-517. Management of system.

Effective Dates. Acts 1955, No. 414, § 20: Mar. 29, 1955. Emergency clause provided: "The General Assembly finds and therefore declares that in the State of Arkansas there are numerous municipalities without waterworks systems to serve their respective inhabitants; that the said municipalities are unable individually to finance the cost of constructing waterworks systems adequate to serve the needs of their respective inhabitants; that on account of the lack of such adequate waterworks systems the health of the inhabitants is jeopardized and the loss of property is threatened from lack of fire protection; and that only by this Act can provision be made for the municipalities to provide for themselves adequate waterworks systems. Therefore, it is found that this Act is necessary for the preservation

of the peace, health and safety of the inhabitants of the said municipalities, and an emergency is hereby declared to exist, and the provisions of this Act shall take effect and be in full force and effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1989, No. 607, § 6: Mar. 15, 1989. Emergency declared.

14-234-501. Definitions.

As used in this subchapter, unless the context requires otherwise:

(1) "Municipality" means any city of the first or second class or any incorporated town in the State of Arkansas;

(2) "Waterworks system" means and includes the waterworks system in its entirety or any integral part thereof including mains, hydrants, meters, valves, standpipes, storage tanks, pumping plants, intakes, wells, impounding reservoirs, or purification plants;

(3) "Mayor" means the mayor of municipalities having the mayor-aldermanic form of government and the presiding officer of municipalities having a commission or other form of government;

(4) "Net revenues" means the revenues of the waterworks system remaining after the payment of the reasonable costs of operation, repair, maintenance, and depreciation.

History. Acts 1955, No. 414, § 1; A.S.A. 1947, § 19-4239.

14-234-502. Construction.

(a) This subchapter shall be construed as cumulative authority for the purchase or construction of a waterworks system and shall not be construed to limit or repeal any existing law with reference thereto.

(b)(1) This subchapter shall, without reference to any other statute, be deemed full authority for the acquisition, construction, improvement, equipment, maintenance, operation, and repair of the waterworks systems provided for in this subchapter and for the issuance and sale of the bonds authorized under the provisions of this subchapter.

(2) This subchapter shall be construed as an additional and alternative method therefor and for the financing thereof.

(3) No petition or election or other or further proceedings in respect to the acquisition or construction of the waterworks systems, or to the issuance or sale of bonds under this subchapter, and no publication of any resolution, ordinance, notice, or proceedings relating to such acquisition or construction, or the issuance or sale of bonds, shall be

required except such as are prescribed by this subchapter, any provision or other statutes of the state to the contrary notwithstanding.

(c) All functions, powers, and duties of the State Board of Health shall remain unaffected by this subchapter.

(d) This subchapter, being necessary for the public health, safety, and welfare, shall be liberally construed to effectuate its purposes.

History. Acts 1955, No. 414, §§ 3, 17, 18; A.S.A. 1947, §§ 19-4241, 19-4255, 19-4256.

14-234-503. Authority for joint undertaking.

(a) Any two (2) or more municipalities in the State of Arkansas may join in the purchase or construction of a waterworks system for each of the municipalities, execute the joint obligation of the several municipalities, and secure the payment thereof by a joint pledge of the net revenues derived from the operation of the several waterworks systems until the obligations, principal and interest, shall be fully paid, as provided in this subchapter.

(b)(1) Any city of the first class having a city manager form of government and divided by a state line shall have the authority to join in the purchase, construction, and operation of a waterworks system with the adjoining city in another state for each of the municipalities, and to execute an agreement for the joint obligation of the municipalities and secure the payment thereof by a joint pledge of the net revenues derived from the operation of the waterworks systems.

(2) The municipalities shall employ a joint manager for the operation of the waterworks system who shall be hired by the city managers of the municipalities and who shall serve under the direct supervision of the city managers jointly.

History. Acts 1955, No. 414, § 2; A.S.A. 1947, § 19-4240; Acts 1989, No. 607, § 1.

CASE NOTES

Pledge of Net Revenues.

A deed of trust, when construed as a whole, provides for the operation and maintenance of the district's property, so that there is no pledge of gross revenues in violation of the statutory provision for pledge only of net revenues. Hink v. Board of Dirs., 235 Ark. 107, 357 S.W.2d 271 (1962).

14-234-504. Cost estimate — Contents of ordinances — Bonds.

(a) Whenever the respective legislative bodies of two (2) or more municipalities shall determine to purchase or construct a waterworks system for the respective municipalities under the provisions of this subchapter, they shall cause an estimate to be made of the costs thereof and shall, by ordinances, provide for the issuance of revenue bonds under the provisions of this subchapter.

(b) The ordinances shall set forth a brief description of the contemplated respective improvements, the estimated costs thereof, the amount, rate of interest, time and place of payment, and other details in connection with the issuance of the bonds.

(c)(1) The bonds shall bear interest at such rate or rates, payable semiannually, and shall be payable at such times and places not exceeding thirty-five (35) years from their date, as shall be prescribed in the respective ordinances providing for their issuance.

(2) The bonds shall be executed by all of the municipalities joining in the undertaking by their respective mayors and clerks or recorders and be the joint and several obligations of the several municipalities.

(d) The ordinances of the respective municipalities shall also declare that a statutory mortgage lien shall exist upon the respective properties so to be acquired or constructed, fix the minimum rate or rates for water to be collected within the respective municipalities prior to the payment of all of the bonds, and pledge the net revenues of the respective municipalities derived from the waterworks systems in the respective municipalities for the purpose of paying the principal of and interest on the bonds.

(e) The rates to be charged within each municipality for the services from the waterworks system within each municipality shall be sufficient to produce total net revenues from all of the municipalities joining in the undertaking to provide for the payment of interest upon all of the bonds issued to provide funds for the costs of acquisition or construction of all of the waterworks systems and to create a sinking fund to pay the principal of the bonds as and when it becomes due.

(f) The respective ordinances shall also provide for the operation and maintenance of the respective waterworks systems and to provide adequate depreciation funds.

History. Acts 1955, No. 414, § 4; 1981, No. 425, § 47, A.S.A. 1947, § 19-4242.

14-234-505. Ordinances — Additional provisions.

(a) The several ordinances authorized in the issuance of the revenue bonds may contain provisions for the acceleration of the maturities of all unmatured bonds in the event of default in the payment of any principal or interest maturing under the bond issue, upon failure to meet any sinking fund requirements, or in any other event stipulated in the ordinances. These provisions will be binding.

(b) The priorities as between successive issuance of revenue bonds may also be controlled by the provisions of the ordinances.

(c) The ordinances may also, if deemed desirable, provide for the execution of an indenture, contemporaneously with the execution of the bonds, by the several municipalities:

(1) Defining the rights of the bondholders inter sese;

(2) Appointing a trustee for the bondholders, which trustee may be a foreign or domestic corporation, vesting in that trustee, to the extent deemed advisable, all rights of action under the bonds;

(3) Providing for the priority of lien as between successive bond issues;

(4) Providing for the acceleration of bond maturities, and containing any covenants on the part of the municipalities relating to the acquisition or construction of the waterworks systems, or the application or safeguarding of the proceeds of the bonds, or other covenants intended for the protection of the bondholders; and

(5) Containing any other provisions, whether similar or dissimilar to the foregoing, which are consistent with the terms of this subchapter and which may be deemed desirable.

History. Acts 1955, No. 414, § 13; A.S.A. 1947, § 19-4251.

14-234-506. Ordinances — Publication — Hearing.

(a) After the passage of the ordinance, it shall be published one (1) time in a newspaper published in the municipality, or if there is no newspaper so published, then in a newspaper which has a bona fide general circulation within the municipality, with a notice to all persons concerned stating that the ordinance has been passed and that the municipality contemplates the issuance of the bonds described in the ordinance and that any person interested may appear before the legislative body, upon a certain date which shall be not less than ten (10) days subsequent to the publication of the ordinance and notice, and present protests.

(b) At the hearings all objections and suggestions shall be heard and the legislative body shall take such action as it shall deem proper in the premises.

History. Acts 1955, No. 414, § 5; A.S.A. 1947, § 19-4243.

14-234-507. Location of system — Sale of water — Ownership of distribution system.

(a) Municipalities are authorized to construct waterworks systems or any integral part thereof either inside or outside the limits of the municipalities and inside and outside the limits of the county in which the municipalities are located.

(b)(1) A municipality purchasing or constructing a waterworks system or integral part thereof may sell the water to private consumers located inside and outside of the municipality.

(2) It may sell a part of the water to an improvement district, or it may sell the water or a part thereof to a private corporation engaged in the business of selling water to private consumers in the municipality.

(c) Nothing in this section shall authorize any city or improvement district to sell its existing plant to a private corporation.

(d) Each municipality shall own its own distribution system, and the several municipalities together may own jointly, on whatever terms they may agree upon, whatever of the waterworks systems that serves the several municipalities jointly.

History. Acts 1955, No. 414, § 3; A.S.A. 1947, § 19-4241.

CASE NOTES

Effect on Subsequent Legislation.

The Regional Water Distribution District Act, § 14-116-101 et seq., authorizing the creation of water distribution districts, is a later statute than this section and is clearly not affected by its provisions as to the joinder of two or more municipalities in the acquiring of a water supply. Hink v. Board of Dirs., 235 Ark. 107, 357 S.W.2d 271 (1962).

14-234-508. Bond issue — Sufficiency — Negotiability — Sale — Fiscal agent.

(a) Bonds provided for in this subchapter shall be issued in whatever amounts may be necessary to provide sufficient funds to pay the total costs of acquisition or construction of the several waterworks systems to be provided for the several municipalities joining in the undertaking. The total costs shall include engineering, legal, and other expenses, together with interest to a date six (6) months subsequent to the estimated date of completion of all of the waterworks systems.

(b) Bonds issued under the provisions of this subchapter are declared to be negotiable instruments.

(c) Bonds shall be executed as provided in this subchapter and be sealed with the corporate seals of the municipalities. In the event any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before delivery of the bonds, the signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until delivery.

(d) Bonds authorized under the provisions of this subchapter may be sold at not less than ninety cents (90¢) on the dollar and the proceeds derived therefrom shall be used exclusively for the purposes for which the bonds are issued. The bonds may be sold at one time or in parcels as funds are needed and may be sold at private sale or at public sale upon whatever notice and in whatever manner the municipalities may determine in their respective ordinances.

(e) In the issuance and sale of the bonds, the municipalities may employ a fiscal agent and shall pay for its services reasonable compensation, except that no fiscal agent may purchase, directly or indirectly, any bonds of the municipalities while it serves them in the capacity of fiscal agent.

History. Acts 1955, No. 414, § 6; A.S.A. 1947, § 19-4244.

14-234-509. Bonds — Nature of indebtedness.

(a) Bonds issued under the provisions of this subchapter shall be payable solely from the total revenues derived from the waterworks systems of all of the municipalities joining in the undertaking.

(b) The bonds shall not in any event constitute an indebtedness of the municipalities within the meaning of the constitutional provisions or limitations.

(c) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter, that it does not constitute an indebtedness of the municipalities within any constitutional or statutory limitation, and that it is the joint and several obligation of all the municipalities executing the bond, payable solely from the total net revenues of the waterworks systems of the municipalities.

History. Acts 1955, No. 414, § 7; A.S.A. 1947, § 19-4245.

14-234-510. Obligation payable from revenue bonds only — Security in condemnation proceedings.

(a) No obligation shall, or may, be incurred by the several municipalities in the acquisition or construction of the waterworks systems contemplated under the provisions of this subchapter or in the condemnation of property in connection therewith, except those as shall be payable solely from the funds to be acquired from the sale of revenue bonds of the character authorized by this subchapter.

(b) In view of this provision, the court, in condemnation proceedings instituted under this subchapter by the several municipalities, may make requirements of security as will serve to protect the landowners.

History. Acts 1955, No. 414, § 15; A.S.A. 1947, § 19-4253.

14-234-511. Allocation of bond proceeds.

(a) Any specified portion of the proceeds of an issue of bonds authorized under the provisions of this subchapter may be allocated by the respective legislative bodies to any particular project, or to new construction, as distinguished from the purchase of waterworks already constructed.

(b)(1) After the allocation, the designated portion of the proceeds of the bond issue shall be kept separate and apart from the remaining proceeds and shall be held by the respective municipalities in trust for the performance of the purposes specified and none other.

(2) The diversion of funds to any other purpose may be enjoined on the suit of the trustee under the indenture, if any, accompanying the bonds, or on the suit of any of the bondholders, or on the suit of any

person whose property, under the respective ordinances, is to be served by the proposed waterworks system.

(c) In making the allocation, the legislative bodies will be controlled by the engineer's estimate of costs referred to in the initial ordinances.

(d)(1) In the event of the allocation of proceeds, the bonds themselves may be similarly or correspondingly segregated and allocated to the respective purposes of the issue.

(2) Bonds segregated and allocated to one (1) purpose shall, from the standpoint of legality and in all other respects, be deemed to have been issued to finance that purpose and that alone.

(3) Notwithstanding the allocation and segregation, all bonds of the entire issue will, unless the initial ordinances or the indenture accompanying the bonds shall provide to the contrary, be secured ratably and equally by the revenues of the entire and aggregate waterworks systems financed by the bond issue.

(4) Unless the ordinances or indenture shall so specifically provide, the allocation of bond proceeds or segregation of bonds will never have the effect of allocating the revenues from any particular portion of the authorized works exclusively to any particular bond or bonds.

History. Acts 1955, No. 414, § 12; A.S.A. 1947, § 19-4250.

14-234-512. Bonds — Tax exemption.

Bonds issued under the provisions of this subchapter shall be exempt from all state, county, and municipal taxes, including income and inheritance taxes.

History. Acts 1955, No. 414, § 14; A.S.A. 1947, § 19-4252.

14-234-513. Fixed rate reduction prohibited — Exception — Surpluses.

(a) Rates for water fixed precedent to the issuance of the bonds shall not be reduced until all of the bonds shall have been fully paid and shall, whenever necessary, be increased in an amount sufficient to provide for the payment of the bonds, both principal and interest, and to provide proper funds for the depreciation account and operation and maintenance charges. However, the rates may be reduced subject to any conditions which may be set out in the ordinances authorizing the issuance of the bonds or in the trust indenture authorized under the provisions of this subchapter.

(b)(1) If any surplus shall be accumulated in the operating and maintenance fund of any one (1) of the several municipalities which shall be in excess of the costs of maintaining and operating the waterworks system of that municipality during the remainder of the current fiscal year and the costs of maintaining and operating the waterworks system of that municipality during the next fiscal year,

then any excess may be transferred to either the depreciation account of the waterworks system of that municipality, or to the bond and interest redemption account, as the several legislative bodies may designate in their respective ordinances.

(2) If any surplus shall be accumulated in the depreciation account of any waterworks system of any one (1) of the several municipalities over and above that which may be necessary for the proper replacements which may be needed during the fiscal year and the next fiscal year, that excess may be transferred to the bond and interest redemption account.

(3) If a surplus shall exist in the bond and interest redemption account, the same may be applied by the legislative bodies in their discretion subject to any limitations in the ordinances authorizing the issuance of the bonds or in the trust indenture:

(A) To the payment of any outstanding unmatured bonds payable from the bond and interest redemption account that may be subject to call for redemption before maturity; or

(B) To any other municipal purpose.

History. Acts 1955, No. 414, § 9; A.S.A. 1947, § 19-4247

14-234-514. Deposit of funds.

(a) Municipalities joining together to issue revenue bonds under the provisions of this subchapter shall designate a bank, which shall be a member of the Federal Deposit Insurance Corporation, to act as a common depository for all of the municipalities to receive and hold on deposit and for disbursement all of the revenues derived from the waterworks systems of the several municipalities.

(b) The depository shall install and maintain a proper system of accounts, showing the amount of revenues received from each municipality and the application thereof.

(c) The accounts shall be subject to audit at least once a year by a competent auditor and the report of the auditor shall be open to inspection at all times to any of the several municipalities, any taxpayer, any water user, or any holder of bonds issued under the provisions of this subchapter, or anyone acting for and on behalf of the municipalities, taxpayer, water user, or bondholder.

(d) All of the funds received as income from the waterworks systems acquired or constructed in whole or in part under the provisions of this subchapter and all funds received from the sale of revenue bonds issued to acquire or construct the waterworks system shall be kept separate and apart from the other funds of the municipalities.

(e) No one (1) account shall be maintained for all of the municipalities in which shall be placed the interest and sinking fund moneys; separate accounts shall be maintained for each municipality in which shall be placed the depreciation funds and funds to provide for the operation and maintenance of the respective waterworks systems.

History. Acts 1955, No. 414, § 11; A.S.A. 1947, § 19-4249.

14-234-515. Statutory mortgage lien — Default.

(a)(1) There shall be created a statutory mortgage lien upon the several waterworks systems acquired or constructed from the proceeds of bonds authorized to be issued.

(2) The lien shall exist in favor of the holder of the bonds, and each of them, and to and in favor of the holder of the coupons attached to the bonds.

(3) The waterworks systems shall remain subject to statutory mortgage lien until payment in full of the principal of and interest on the bonds.

(b) Subject to whatever restrictions may be contained in the indenture authorized in this subchapter, any holder of bonds issued under the provisions of this subchapter or any coupons representing interest accrued thereon, may, either at law or in equity, enforce the statutory mortgage lien hereby conferred and may, by proper suit, compel the performance of the duties of the officials of the issuing municipalities set forth in this subchapter.

(c) If there is default in the payment of the principal of or interest upon any of the bonds, any court having jurisdiction in any proper action may appoint a receiver to administer the waterworks systems on behalf of the municipalities with power to charge and collect rates sufficient to provide for the payment of the principal of and interest on the bonds and for the payment of the operating expenses and to apply the income and revenues in conformity with this subchapter and the ordinances providing for the issuance of the bonds.

History. Acts 1955, No. 414, § 8; A.S.A. 1947, § 19-4246.

14-234-516. Eminent domain.

For the purpose of acquiring any waterworks system under the provisions of this subchapter, or for the purpose of acquiring any properties necessary therefor, each of the municipalities joining together under the provisions of this subchapter shall have the right of eminent domain, as is provided in §§ 18-15-301—18-15-303.

History. Acts 1955, No. 414, § 10; A.S.A. 1947, § 19-4248.

14-234-517. Management of system.

(a) Municipalities desiring to avail themselves of the benefits of this subchapter and join together in the issuance of bonds as provided under the provisions of this subchapter, by proper ordinances, passed by all of the respective municipalities, may employ, under terms and for a compensation satisfactory to the respective municipalities, the same

person, or persons, or corporation to manage and operate on behalf of all of the municipalities all of the several waterworks systems.

(b) The person or persons or corporation so employed jointly by the several municipalities may be vested with full and complete authority to manage, operate, employ, extend, and maintain the several waterworks systems and shall have full and complete charge of the waterworks systems including the right to employ or remove any and all assistants and employees of whatsoever nature, kind, or character and to fix, regulate, and pay their salaries, it being the intention of this section to vest in the person or persons or corporation unlimited authority to operate, manage, maintain, improve, and extend the waterworks systems and to have full and complete charge thereof.

(c) The person, or persons, or corporation shall not have authority or power to sell, mortgage, or encumber the waterworks systems, or any of them.

History. Acts 1955, No. 414, § 16; A.S.A. 1947, § 19-4254.

CHAPTER 235

MUNICIPAL SEWAGE SYSTEMS

SUBCHAPTER.

1. General Provisions.
2. Operation of Systems by Municipalities.
3. Sewer Connections by Property Owners.

RESEARCH REFERENCES

C.J.S. 63 C.J.S., Mun. Corp., § 1235.
64 C.J.S., Mun. Corp., §§ 1802-1807.

Subchapter 1 — General Provisions

SECTION.

14-235-101. [Repealed.]

14-235-101. [Repealed.]

Publisher's Notes. This section, concerning a municipality's disposal of waste in another county, was repealed by Acts 1995, No. 555, § 1. The section was derived from Acts 1981, No. 476, §§ 1, 2; 1983, No. 140, § 1; A.S.A. 1947, §§ 19-4116.1, 19-4116.2.

Subchapter 2 — Operation of Systems by Municipalities

SECTION.
14-235-201. Definition.
14-235-202. Construction.
14-235-203. Authority generally.
14-235-204. Extent of authority.
14-235-205. Authority to own, etc., systems.
14-235-206. Appointment of sewer committee.
14-235-207 Powers and duties of sewer committee.
14-235-208. Appointment, members, etc., of sanitary board.
14-235-209. Powers and duties of sanitary board.
14-235-210. Power of eminent domain.
14-235-211. Acquisition of encumbered property.
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14-235-224. Service payments by municipalities.
14-235-225. Authority for joint undertaking.

A.C.R.C. Notes. References to "this subchapter" in §§ 14-235-201 — 14-235-224 may not apply to § 14-235-225 which was enacted subsequently.

Cross References. Exemptions from civil service systems, §§ 14-49-301, 14-50-302.

Extension of lines beyond corporate limits, § 14-234-111.

General authority over sewers and drains, § 14-54-601.

Local Government Bond Act of 1985, § 14-164-301 et seq.

Local government reserve funds, § 14-73-101 et seq.

Effective Dates. Acts 1933, No. 132, § 24: approved Mar. 21, 1933. Emergency clause provided: "Whereas, there are communities in this State which are seriously in need of improvements of the kind authorized in this act, the absence of which improvements creates a condition which menaces the public health and safety; and whereas the passage of this act will create a means of immediately financing the construction of such works through emergency government lending agencies, which is not available under existing laws; and whereas the immediate construction of such works (which can be accomplished with the aid of existing government lending agencies) will not only relieve conditions jeopardizing the public health and safety, but will give employment to numerous citizens, thereby minimizing, in some degree, the prevailing conditions of unemployment attending the existing financial depression; and

"Whereas, there are now in use works (owned by other than municipalities) of the character authorized by this act which require immediate repairs, improvements and/or extensions that can not be effected or accomplished because of the inability to finance same under existing laws, though the necessity for such repairs, improvements and extensions menace the public health and safety; and this act provides a method whereby such works could be acquired by municipalities and the necessary repairs, improvements and/or extensions promptly made;

"Therefore, it is hereby declared that an emergency exists, and that this act is necessary for the immediate preservation of the public peace, health and safety, and that this act therefore will take effect, and be in force, from and after its passage."

Acts 1961, No. 156, § 2: Mar. 3, 1961. Emergency clause provided: "It has been

found and is declared by the General Assembly of Arkansas that there exists great confusion in the application of the provisions of this Act to those cities and towns operating under the commission form of government, and that enactment of this bill will provide for more efficient administration of the affairs of those cities and towns operating under such commission form of government. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1970 (Ex. Sess.), No. 46, § 4: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvments is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this state and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this act. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 401, § 3: Mar. 14, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the lack of statutory authority for municipalities owning sewage improvement districts to borrow money, except by bond issues, is hampering municipalities in the financing of improvements to their municipal sewage systems; that there is urgent need for immediate authority for such municipalities to borrow money on promissory notes, to provide for preliminary expense prior to the issuance of revenue bonds or to provide interim financing pending receipt of federal or state grant money; that this Act is designed to give municipalities such authority and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 528, § 5: Mar. 26, 1979. Emergency clause provided: "It has been found and it is hereby declared that the interest rate limitation presently in effect for certain revenue promissory notes secured by pledges of municipal sewer system revenues (being six percent (6%) per annum) is not adequate to permit the interim financing by that method of needed municipal sewer system improvements and that certain of these improvements are urgently and immediately needed. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall be in effect upon its passage and approval."

Acts 1979, No. 575, § 2: Mar. 26, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relating to contracts or agreements for construction, extension, repair, and improvement of municipal sewer systems is unduly restrictive in requiring competitive bidding on small contracts, and that such restrictions are causing severe hardship and resulting in unnecessary added expense to municipalities; that there is some confusion in the present law regarding such contracts since Section 1 of Act 159 of 1949, as amended, which purports to apply to all construction contracts entered into by the State or any political subdivision thereof must be awarded upon competitive bids only if the contract exceeds

$10,000; and that this Act should be given effect immediately to eliminate such confusion and to relieve the hardship mentioned above. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1985, No. 290, § 3: Mar. 8, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is inequitable to require a landowner to be liable for the sewerage system charges incurred by the landowner's tenants and lessees; that this bill eliminates such liability and should be given immediate effect in order to eliminate the inequity resulting from the present law. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 86, § 5: Feb. 25, 1987. Emergency clause provided: "It is found and it is hereby declared by the General Assembly of the State of Arkansas that availability of financing of extraordinary expenses or liabilities of cities and towns arising from the ownership and operation of municipal sewer systems is essential to the continued operation of safe and sanitary sewer facilities by cities and towns in this state, without which the life, health and safety of the inhabitants of this state are endangered. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety shall be in effect upon its passage and approval."

Acts 1989, No. 254, § 5: Feb. 24, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law is unclear regarding whether municipalities may borrow funds to refinance existing obligations pertaining to their waterworks and sewage systems; that this Act clarifies the law to specifically grant municipalities that authority; that until this Act becomes effective municipalities are going to be adversely affected; and that this Act should therefore be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 607, § 6: Mar. 15, 1989. Emergency declared.

RESEARCH REFERENCES

Ark. L. Rev. Municipal Improvement Bonds in Arkansas, 8 Ark. L. Rev. 146.

Comment, Municipal Bonds and Amendment 62: Clearing Up a Serbonian Bog, 39 Ark. L. Rev. 499.

CASE NOTES

Analysis

Appeals.
Effect on prior law.
Sewer rates.

Appeals.

Supreme Court had jurisdiction of appeal from determination by circuit court that section of city ordinance requiring property owners to connect with sewer

system was invalid even though this subchapter, authorizing installation of sewer system, does not provide for an appeal, since Supreme Court has jurisdiction of appeals from all circuit court proceedings in the state. City of Mt. Home v. Ray, 223 Ark. 553, 267 S.W.2d 503 (1954).

Effect on Prior Law.

The Municipal Improvement District Law, § 14-88-201 et seq., was not affected by this subchapter. Ray v. City of Mt. Home, 228 Ark. 885, 311 S.W.2d 163 (1958).

Sewer Rates.

Acts 1935, No. 324, § 14-200-101 and this subchapter et seq., gave municipalities different cumulative procedures for acquiring a sewage system. However, only this subchapter gives a city the specific authority to set sewer rates, and only this subchapter provides a procedure for changing those rates. City of Ft. Smith v. O.K. Foods, Inc., 293 Ark. 379, 738 S.W.2d 96 (1987).

14-235-201. Definition.

As used in this subchapter, unless the context otherwise requires, the term "works" shall be construed to mean and include the structures and property as provided in § 14-235-203.

History. Acts 1933, No. 132, § 1; Pope's Dig., § 9977; A.S.A. 1947, § 19-4101.

CASE NOTES

Cited: Cowling v. City of Foreman, 238 Ark. 677, 384 S.W.2d 251 (1964).

14-235-202. Construction.

This subchapter, being necessary for the public health, safety, and welfare, shall be liberally construed to effectuate the purposes of it.

History. Acts 1933, No. 132, § 22; Pope's Dig., § 9998; A.S.A. 1947, § 19-4122.

14-235-203. Authority generally.

(a) The authority given in this subchapter shall be in addition to, and not in derogation of, any power existing in any municipality under any statutory or charter provisions which it may adopt.

(b) For all purposes of this subchapter, all municipalities shall have jurisdiction for ten (10) miles outside their corporate limits.

(c)(1) Every municipality in the State of Arkansas is authorized and empowered to own, acquire, construct, equip, operate, and maintain, within or without the corporate limits of the city or town, a sewage collection system or a sewage treatment plant, intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations, and all other appurtenances necessary or useful and convenient for the collection and treatment, purification, and disposal in a sanitary manner of

the liquid and solid waste, sewage, night soil, and industrial waste of the municipality. However, before a municipality may construct, operate, or maintain a sewage collection system or sewage treatment plant outside the corporate limits, it must be demonstrated in accordance with subsection (d) of this section that such construction, operation, or maintenance within the corporate limits is not feasible. If it is determined that it is not feasible to construct, operate, or maintain the sewage collection system or sewage treatment plant within the corporate limits, the feasibility of constructing, operating, or maintaining the sewage collection system or sewage treatment plant within the municipality's seven-year growth area must be determined in accordance with subsection (d) of this section.

(2)(A) A municipality shall not seek placement of a sewage collection system or sewage treatment plant within its seven-year growth area if it is feasible to locate the sewage collection system or sewage treatment plant within the corporate limits of the municipality.

(B) A municipality shall not seek placement of a sewage collection system or sewage treatment plant outside its seven-year growth area if it is feasible to locate the sewage collection system or sewage treatment plant within the seven-year growth area of the municipality.

(d) The determination of feasibility shall include the municipality's best efforts to locate the sewage collection system or sewage treatment plant within the corporate limits of the municipality. The question of feasibility in regard to placing a sewage collection system or sewage treatment plant outside the corporate limits of the municipality shall address all criteria required by applicable state and federal laws and regulations, applicable financing requirements, physical possibility, cost of construction or maintenance, and any material adverse effect on real property outside the corporate limits of the municipality. The determination of material adverse effect on real property outside the corporate limits of the municipality shall be made by a state-certified appraiser and shall be in conformance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation. The determination of feasibility shall be made by a certified engineer appointed by the municipality's governing body.

(e) All feasibility determinations shall be made in good faith without a predisposition to any proposed or feasible locations. Any engineer or engineering firm hired to determine feasibility as provided in this section shall consider not only locations proposed by the municipality, but any location within the corporate limits that may be suitable.

History. Acts 1933, No. 132, §§ 1, 20; Pope's Dig., §§ 9977, 9996; A.S.A. 1947, §§ 19-4101, 19-4120; Acts 1997, No. 1336, § 1.

Publisher's Notes. Acts 1997, No. 1336 became law without the Governor's signature.

Amendments. The 1997 amendment added the last two sentences in present (c)(1); added (c)(2); and added (d) and (e).

CASE NOTES

Outside Corporate Limits.

A sewer improvement district may acquire an outlet for the sewage, and it may do so although the outlet extends beyond the corporate limits of the municipality within which the sewer district was organized, but compensation for the outlet and the damages incident thereto should be assessed on the theory of a permanent taking under the right of eminent domain. Sewer Imp. Dist. No. 1 v. Jones, 199 Ark. 534, 134 S.W.2d 551 (1939).

Cited: Cowling v. City of Foreman, 238 Ark. 677, 384 S.W.2d 251 (1964).

14-235-204. Extent of authority.

(a) Except as provided in § 14-235-203, this subchapter shall, without reference to any other statute, be deemed full authority for the construction, acquisition, improvement, equipment, maintenance, operation, and repair of the works provided for in this subchapter and for the issuance and sale of the bonds authorized by this subchapter and shall be construed as an additional and alternative method for them and for the financing of them.

(b) No petition or election or other or further proceeding in respect to the construction or acquisition of the works or to the issuance or sale of bonds under this subchapter, and no publication or any resolution, ordinance, notice, or proceeding relating to such construction or acquisition or to the issuance or sale of such bonds shall be required except such as are prescribed by this subchapter, any provisions of other statutes of the state to the contrary notwithstanding. However, all functions, powers, and duties of the State Board of Health shall remain unaffected by this subchapter.

History. Acts 1933, No. 132, § 21, Pope's Dig., § 9997; A.S.A. 1947, § 19-4121; Acts 1997, No. 1336, § 2.

Publisher's Notes. Acts 1997, No. 1336 became law without the Governor's signature.

Amendments. The 1997 amendment added "Except as provided in § 14-235-203" to the beginning of (a).

CASE NOTES

ANALYSIS

Petitions.
Referendum.

Petitions.

Petition is not a condition precedent to action on part of the city council in enacting ordinance providing for issuance of revenue bonds for construction of sewage disposal plant and resolution approving bid, such action being distinctly legislative, and not the exercise of a mere ministerial function. Carpenter v. City of Paragould, 198 Ark. 454, 128 S.W.2d 980 (1939).

Referendum.

Citizens have constitutional right to have ordinance providing for issuance of revenue bonds for cost of sewage disposal plant for city and resolution accepting bid for the improvement referred to the people of the city for a vote. Carpenter v. City of Paragould, 198 Ark. 454, 128 S.W.2d 980 (1939).

The action of a city council in enacting sewer ordinances is legislative and therefore subject to a referendum and the vote of all the electorate of a city under Ark. Const. Amend. 7. Lawrence v. Jones, 228 Ark. 1136, 313 S.W.2d 228 (1958).

14-235-205. Authority to own, etc., systems.

(a) A municipality shall have authority to:

(1) Acquire, by gift, grant, purchase, condemnation, or otherwise, all necessary lands, rights-of-way, and property within or without the corporate limits of the city or town; and

(2) Issue revenue bonds to pay the cost of these works and property.

(b) No obligation shall be incurred by the municipality in the construction or acquisition except such as is payable solely from the funds provided under the authority of this subchapter.

History. Acts 1933, No. 132, § 1; Pope's Dig., § 9977; A.S.A. 1947, § 19-4101.

CASE NOTES

Analysis

General revenues.
Outside corporate limits.

General Revenues.

A city should not use its general revenues for the repair of sewers, when to do so would defeat its ability to pay the administrative expenses of the city government. Manhattan Rubber Mfg. Div. of Raybestos, Inc. v. Bird, 208 Ark. 167, 185 S.W.2d 268 (1945).

Outside Corporate Limits.

A sewer improvement district may acquire an outlet for the sewage, and it may do so although the outlet extends beyond the corporate limits of the municipality within which the sewer district was organized, but compensation for the outlet and the damages incident thereto should be assessed on the theory of a permanent taking under the right of eminent domain. Sewer Imp. Dist. No. 1 v. Jones, 199 Ark. 534, 134 S.W.2d 551 (1939).

Cited: Cowling v. City of Foreman, 238 Ark. 677, 384 S.W.2d 251 (1964).

14-235-206. Appointment of sewer committee.

(a)(1)(A) The construction, acquisition, improvement, equipment, custody, operation, and maintenance of any works for the collection, treatment, or disposal of sewage and the collection of revenue from it for the service rendered by it, shall be effected and supervised by a committee to be designated for that purpose by the municipal council.

(B) The committee will function under the control of the council to such extent as may be provided in the ordinance or resolution appointing the committee.

(2) The council may remove any member of the committee, with or without cause, and may appoint any substitute members in case of death, removal, or resignation.

(3)(A) The committee will be called the "sewer committee."

(B) Provided, however, any city may by ordinance change the name of its sewer committee to "wastewater treatment committee", and, in such instance, the wastewater treatment committee shall have all powers, duties, and functions prescribed by this chapter for wastewater treatment committees.

(b) The council may appoint one (1) sewer committee to handle all municipal sewer projects, or it may entrust each project to a separate committee.

History. Acts 1933, No. 132, § 2; Pope's Dig., § 9978; Acts 1961, No. 156, § 1, A.S.A. 1947, § 19-4102; Acts 1995, No. 555, § 1; 1995, No. 849, § 1.

Amendments. The 1995 amendment by No. 555 repealed former subsection (c).

The 1995 amendment by No. 849 added (a)(3)(B); and added the quotation marks in (a)(3)(A).

CASE NOTES

Cited: United States v. Little Rock Sewer Comm., 460 F. Supp. 6 (E.D. Ark. 1978); City of Little Rock v. Chartwell Valley Ltd. Partnership, 299 Ark. 542, 772 S.W.2d 616 (1989).

14-235-207. Powers and duties of sewer committee.

(a)(1)(A) The sewer committee shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this subchapter.

(B) Any contract relating to the financing of the acquisition or construction of any works or any trust indenture as provided for in § 14-235-219 shall be approved by the municipal council before it shall be effective.

(2) The committee may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and such other employees as, in its judgment, may be necessary in the execution of its powers and duties and may fix their compensation, all of whom shall do such work as the committee shall direct.

(3) All compensation and all expenses and liabilities incurred in carrying out the provisions of this subchapter shall be paid solely from funds provided under the authority of this subchapter, and the committee shall not exercise or carry out any authority or power given it in this subchapter so as to bind the committee or the municipality beyond the extent to which money shall have been or may be provided under the authority of this subchapter.

(4)(A) No contract or agreement with any contractor for labor or material exceeding the sum of ten thousand dollars ($10,000) shall be made without advertising for bids.

(B) The bids shall be publicly opened and award made to the best bidder, with power in the committee to reject any or all bids.

(b) After the construction, installation, and completion of the works or the acquisition of them, the committee shall:

(1) Operate, manage, and control them and may order and complete any extensions, betterments, and improvements of and to the works that it may deem expedient if funds for them are available, or are made available, as provided in this subchapter;

(2) Establish rules and regulations for the use and operation of the works and of other sewers and drains connected with them so far as they may affect the operation of the works; and

(3) Do all things necessary or expedient for the successful operation of the works.

(c) All public ways or public works damaged or destroyed by the committee in carrying out its authority under this subchapter shall be restored or repaired by the committee and placed in their original condition, as nearly as practicable, if requested to do so by proper authority, out of funds provided by this subchapter.

History. Acts 1933, No. 132, § 3; Pope's Dig., § 9979; Acts 1979, No. 575, § 1, A.S.A. 1947, § 19-4103.

CASE NOTES

Employees.

In the critical area of hiring supervisory personnel, the sewer committee is charged with duties and powers analogous to the powers exercised by a corporate board of directors in hiring key executive employees. United States v. Little Rock Sewer Comm., 460 F. Supp. 6 (E.D. Ark. 1978).

14-235-208. Appointment, members, etc., of sanitary board.

(a)(1) The municipal council may, in its discretion, provide by ordinance that the custody, administration, operation, and maintenance of sewage system works shall be under the supervision and control of a sanitary board created as provided in this section.

(2)(A)(i) A sanitary board shall be composed of the mayor of the municipality and two (2) persons appointed by the council.

(ii) No officer or employee other than the mayor of the municipality, whether holding a paid or unpaid office, shall be eligible to appointment on the board until at least one (1) year after the expiration of the term of his public office.

(B)(i) The appointees shall originally be appointed for terms of two (2) and three (3) years, respectively, and, upon the expiration of each term and each succeeding term, an appointment of a successor shall be made in like manner for a term of three (3) years.

(ii) Vacancies shall be filled for an unexpired term in the same manner as the original appointment.

(3) Each member shall give such bond, if any, as may be required by ordinance.

(b)(1)(A) The mayor shall act as chairman of the board, which shall select a vice chairman from its members and shall designate a secretary and treasurer, who need not be members of the sanitary board.

(B) The secretary and the treasurer may be one (1) and the same.

(2) The vice chairman, secretary, and treasurer shall hold office as such at the will of the board.

(c)(1)(A) The members of the board shall receive such compensation for their services, either as a salary or as payments for meetings

attended, as the council may determine, not in excess of twenty-five dollars ($25.00) per month for each member, and shall be entitled to payment for their reasonable expenses incurred in the performance of their duties.

(B) The council shall, in its discretion, fix the reasonable compensation of the secretary and treasurer and shall fix the amount of bond to be given by the treasurer.

(2) All compensation, together with the expenses referred to in this section, shall be paid solely from funds provided under the authority of this subchapter.

History. Acts 1933, No. 132, § 15; Pope's Dig., § 9991; A.S.A. 1947, § 19-4115.

14-235-209. Powers and duties of sanitary board.

(a) The board shall have power to establish bylaws, rules, and regulations for its own government.

(b) The board, in respect to all matters of custody, operation, administration, and maintenance of the works, shall have all the powers and perform all the duties provided in § 14-235-207 for the sewer committee in respect of these matters.

History. Acts 1933, No. 132, § 15; Pope's Dig., § 9991; A.S.A. 1947, § 19-4115.

14-235-210. Power of eminent domain.

(a)(1) Under this subchapter, every municipality shall have power to condemn any works to be acquired and any land, rights, easements, franchises, and other property, real or personal, deemed necessary or convenient for the construction of any works, or for extensions, improvements, or additions to them. In this connection, they may have and exercise all the rights, powers, and privileges of eminent domain granted to municipalities under the laws relating to them.

(2) Title to property condemned shall be taken in the name of the municipality.

(3) Proceedings for such appropriation of property shall be under and pursuant to the provisions of §§ 18-15-301 — 18-15-303 and any acts supplemental to it. However, a municipality shall be under no obligation to accept and pay for any property condemned or purchased except from the funds provided pursuant to this subchapter.

(4)(A) In any proceedings to condemn, such orders may be made as may be just to the municipality and to the owners of the property to be condemned.

(B) An undertaking or other security may be required securing the owners against any loss or damage to be sustained by reason of the failure of the municipality to accept and pay for the property. However, the undertaking or security shall impose no liability upon

the municipality except such as may be paid from the funds provided under the authority of this subchapter.

(b) In event of the acquisition by purchase, the sewer committee may obtain and exercise an option from the owner of the property for the purchase of it, or may enter into a contract for the purchase of it, and the purchase may be made upon such terms and conditions, and in such manner, as the committee may deem proper.

(c) In event of the acquisition of any works already constructed by purchase or condemnation, the committee, at or before the time of the adoption of the ordinance described in § 14-235-213, shall cause to be determined what repairs, replacements, additions, and betterments will be necessary in order that the works may be effective for their purpose. An estimate of the cost of these improvements shall be included in the estimate of cost required by § 14-235-213, and improvement shall be made upon the acquisition of the works and as a part of the cost of them.

History. Acts 1933, No. 132, § 5; Pope's Dig., § 9981; A.S.A. 1947, § 19-4105.

CASE NOTES

ANALYSIS

Burden of proof.
Damages.

Burden of Proof.

In eminent domain proceeding for acquisition of land for sewer, landowner had burden of proving that taking was not for a public purpose. City of El Dorado v. Kidwell, 236 Ark. 905, 370 S.W.2d 602 (1963).

Damages.

All damages incident to the construction of a sewer system and the digging of outlet ditches as a part thereof are recoverable by the person damaged, but action, being based upon the exercise of the right of eminent domain, must be brought within three years after the exercise of the right of eminent domain, while the limitation does not apply to a suit to abate a nuisance if the sewer plant has become one. Sewer Imp. Dist. No. 1 v. Jones, 199 Ark. 534, 134 S.W.2d 551 (1939).

Owner of property through which sewer district caused ditches to be dug and into which polluted water flowed from septic tank was held entitled to compensation for damages resulting therefrom to the extent that the effluvium and the water from it diminished the value of his land. Sewer Imp. Dist. No. 1 v. Jones, 199 Ark. 534, 134 S.W.2d 551 (1939).

14-235-211. Acquisition of encumbered property.

No property shall be acquired under this subchapter upon which any lien or other encumbrance exists unless at the time the property is acquired a sufficient sum of money be deposited in trust to pay and redeem the lien or encumbrance in full.

History. Acts 1933, No. 132, § 17; Pope's Dig., § 9993; A.S.A. 1947, § 19-4117.

14-235-212. Contracting with other political subdivisions.

(a)(1)(A) Any municipality operating a sewage collection system or sewage disposal works as defined in this subchapter or which, as provided in this subchapter, has ordered the construction or acquisition of such works, in this section called the owner, is authorized to contract with one (1) or more other cities, towns, or political subdivisions within the state, in this section called the lessee.

(B) The lessees are authorized to enter into contracts with the owners, for the service of such works to the lessees and their inhabitants, but only to the extent of the capacity of the works without impairing the usefulness of them to the owners, upon such terms and conditions as may be fixed by the sewer committee or sanitary board and approved by ordinance of the respective contracting parties.

(2) No such contract shall be made for a period of more than fifteen (15) years or in violation of the provisions of an ordinance authorizing bonds under this subchapter or in violation of the provisions of the trust indenture.

(b)(1) The lessee shall, by ordinance, have power to establish, change, and adjust, so far as will not impair the rights of bondholders, rates and charges for the service rendered by the works against the owners of the premises served, in the manner provided in § 14-235-223 for establishing, changing, and adjusting rates and charges for the service rendered in the municipality where the works are owned and operated, and the rates or charges shall be collectible and shall be a lien as provided in § 14-235-223 for rates and charges made by the owner.

(2) The necessary intercepting sewers and appurtenant works for connecting the works of the owner with the sewerage system of the lessee shall be constructed by the owner or the lessee upon such terms and conditions as may be set forth in the contract, and the cost, or that part of the cost of them which is to be borne by the owner, may be paid as a part of the cost of the works from the proceeds of bonds issued under this subchapter unless otherwise provided by the ordinance or trust indenture prior to the issuance of the bonds.

(3) The income received by the owner under any such contract, if so provided in the ordinance or trust indenture, shall be deemed to be a part of the revenues of the works as defined in this subchapter and shall be applied as provided in this subchapter for the application of such revenues.

History. Acts 1933, No. 132, § 16; Pope's Dig., § 9992; A.S.A. 1947, § 19-4116.

14-235-213. Enactment of ordinance before construction or acquisition.

Before any municipality shall construct or acquire any works under this subchapter, the municipal council shall enact ordinances which shall:

(1) Set forth:

(A) A brief and general description of the works proposed to be constructed or purchased; and

(B) If the works are to be constructed, a reference to the preliminary report or plans and specifications which shall theretofore have been prepared and filed with the clerk or recorder by an engineer chosen by such council;

(2) Set forth:

(A) The cost of the works estimated by the engineer chosen as prescribed; or

(B) The purchase price if the works are to be purchased;

(3) Order the construction or acquisition of the works, in which connection the ordinance will recite that the terms of the construction or acquisition, so far as they are not set out in the ordinance, will thereafter be fixed by the council or sewer committee;

(4) State the names of the members of the sewer committee to have charge of the works and the construction or acquisition of them;

(5) Direct that revenue bonds of the municipality shall be issued pursuant to this subchapter in such an amount as may be found necessary to pay the cost of the works; and

(6) Contain such other provisions as may be necessary in the premises.

History. Acts 1933, No. 132, § 4; Pope's Dig., § 9980; A.S.A. 1947, § 19-4104.

CASE NOTES

ANALYSIS

Connections to system.
Construction contracts.
Invalid ordinances.
Petitions.
Referendum.

Connections to System.

An ordinance requiring property owners to connect with a sewer system is valid if there is a declaration by city board of health or some constituted health authority that existing facilities are inadequate and require the construction and operation of sewerage system. City of Mt. Home v. Ray, 223 Ark. 553, 267 S.W.2d 503 (1954).

Construction Contracts.

City commissioners had power to contract for construction of sewage disposal plant by lowest responsible bidder in conformity with this subchapter; their powers, in the premises, are largely discretionary, and unless abused, injunctive relief will not be granted. Johnson v. Russell, 198 Ark. 49, 127 S.W.2d 260 (1939).

Invalid Ordinances.

Ordinance providing for issuance of revenue bonds under authority of statute authorizing issuance of such bonds for construction of waterworks to obtain funds for extension of city's waterworks system and also of sewage system was

held not valid. Mathers v. Moss, 202 Ark. 554, 151 S.W.2d 660 (1941).

Petitions.

Petition is not a condition precedent to action on part of the city council in enacting ordinance providing for issuance of revenue bonds for construction of sewage disposal plant and resolution approving bid, such action being distinctly legislative, and not the exercise of a mere ministerial function. Carpenter v. City of Paragould, 198 Ark. 454, 128 S.W.2d 980 (1939).

Referendum.

Citizens have constitutional right to have ordinance providing for issuance of revenue bonds for cost of sewage disposal plant for city and resolution accepting bid for the improvement referred to the people of the city for a vote. Carpenter v. City of Paragould, 198 Ark. 454, 128 S.W.2d 980 (1939).

The action of a city council in enacting sewer ordinances is legislative and therefore subject to a referendum and the vote of all the electorate of a city under Ark. Const. Amend. 7. Lawrence v. Jones, 228 Ark. 1136, 313 S.W.2d 228 (1958).

14-235-214. Cost of works.

The cost of works under this subchapter shall be deemed to include:

(1) The cost of acquisition or construction of them;

(2) The cost of all property, rights, easements, and franchises deemed necessary or convenient for them and for the improvements determined upon as provided in § 14-235-210;

(3) Interest upon bonds prior to and during construction or acquisition and for six (6) months after completion of construction or of acquisition of the improvements mentioned;

(4) Engineering and legal expenses;

(5) Expense for estimates of cost and of revenues;

(6) Expense for plans, specifications, and surveys;

(7) Other expenses necessary or incident to determining the feasibility or practicability of the enterprise;

(8) Administrative expense; and

(9) Such other expenses as may be necessary or incident to the financing authorized in this subchapter and the construction or acquisition of the works and the placing of the works in operation and the performance of the things required in this subchapter or permitted in connection with any of it.

History. Acts 1933, No. 132, § 6; Pope's Dig., § 9982; A.S.A. 1947, § 19-4106.

14-235-215. Issuance of revenue bonds and notes generally.

(a)(1) Nothing contained in this subchapter shall be so construed as to authorize or permit any municipality to make any contract or to incur any obligation of any kind or nature except such as shall be payable solely from the funds provided under the authority of this subchapter.

(2)(A)(i) Funds for the payment of the entire cost of the works and for the payment of any extraordinary expenses or liabilities arising from the ownership and operation of the works including, without limita-

tion, liabilities to customers of the works relating to rates charged by the municipality for use of the works shall be provided by funds derived from the operation of the works, by funds of the municipality appropriated for that purpose, and by the issuance of municipal revenue bonds, the principal and interest of which shall be payable solely from the special fund provided in § 14-235-221 for payment.

(ii) The bonds shall not, in any respect, be a corporate indebtedness of the municipality within the meaning of any statutory or constitutional limitations on them.

(B) All the details of the bonds shall be determined by ordinance of the municipality.

(b)(1)(A) Any municipality owning or operating a sewage system, however constructed or acquired, and desiring to construct improvements and betterments to it, may borrow money to be used for these purposes, to refinance or retire existing indebtedness related to the sewage system, or to provide funds for preliminary expense prior to the issuance of revenue bonds or to provide interim financing pending receipt of federal or state grant-in-aid of loan disbursements.

(B) Such a loan shall be evidenced by revenue promissory notes as set out in this section.

(2) The money so borrowed shall be deposited in a revenue note fund and shall be used solely for the purposes authorized in this section.

(3) The notes evidencing the loan shall be authorized by the legislative body of the municipality and shall be due in not exceeding five (5) years from date and shall bear interest at such rate or rates as provided in the ordinance authorizing their issuance, interest being payable semiannually.

(4)(A) The note or notes shall be payable solely from the revenues derived from the sewage system and shall not, in any event, constitute an indebtedness of the municipality within the meaning of the constitutional provisions or limitations.

(B) It shall be plainly stated on the face of each note that the same has been issued under the provisions of this subchapter and that it does not constitute an indebtedness of the municipality within any constitutional or statutory limitations.

(5) The notes shall be subordinate to any outstanding revenue bonds theretofore issued by the municipality.

(6)(A) It shall be no objection to the subsequent issue of any revenue bonds that a portion of the proceeds received from the sale of the revenue bonds is to be used to retire the indebtedness permitted by this section.

(B) If the proceeds of the bonds are so used, then the improvements constructed or purchased with the proceeds of the loan authorized by this section shall be considered to be a portion of improvements constructed or purchased with the revenue bonds subsequently issued.

(7) All interest paid on the revenue bonds shall be exempt from State of Arkansas income tax.

History. Acts 1933, No. 132, § 7; Pope's Dig., § 9983; Acts 1975, No. 401, § 1; 1979, No. 528, § 1; 1981, No. 425, § 17; A.S.A. 1947, § 19-4107; Acts 1987, No. 86, § 1; 1989, No. 254, § 2.

Publisher's Notes. Acts 1979, No. 528, § 4, provided: "Nothing set forth in this act shall be construed to affect bonds previously issued or other obligations previously incurred under Act No. 132 of 1933, as amended, which obligations are ratified and confirmed."

Acts 1987, No. 86, § 2, provided that it is the purpose of this act to enable cities and towns to issue revenue bonds to finance extraordinary expenses or liabilities arising from the ownership and operation of a municipal sewer system, and these purposes were declared by the General Assembly to be public purposes for which revenue bonds may be issued under Ark. Const. Amend. 65.

CASE NOTES

Analysis

Constitutionality.
Power to issue.

Constitutionality.

Issuance of revenue bonds for improvement of sewer system was not invalid on the ground that requirements set forth in former Ark. Const. Amend. 13 (repealed) were not followed, since bonds were issued pursuant to authority of this section and not under the procedure outlined in former Ark. Const. Amend. 13 (repealed), which applied only to issuance of municipal bonds secured by property tax, and not to bonds secured by revenue derived from operation of sewage system. Boswell v. City of Russellville, 223 Ark. 284, 265 S.W.2d 533 (1954).

Power to Issue.

Incorporated towns or cities have the exclusive power to issue bonds to raise funds to enlarge their water or sewer system. Portis v. Board of Pub. Utils., 213 Ark. 201, 209 S.W.2d 864 (1948).

14-235-216. Terms, execution, and sale of bonds.

(a)(1) Revenue bonds issued under this subchapter shall bear interest at such rate or rates, payable annually or at shorter intervals, and shall mature at such time or times as may be determined by ordinance.

(2) The bonds may be made redeemable before maturity, at the option of the municipality, to be exercised by the sewer committee, at not more than the par value thereof and a premium of five percent (5%), under such terms and conditions as may be fixed by the ordinance authorizing the issuance of the bonds.

(3) The principal and interest of the bonds may be made payable in any lawful medium.

(4) The ordinance shall determine the form of the bonds, including the interest coupons to be attached to them, and shall fix the denomination or denominations of the bonds and the place or places of payment of the principal and interest of them, which may be at any bank or trust company within or without the state.

(5) The bonds shall contain a statement on their face that the municipality shall not be obligated to pay them or the interest on them except from the special fund provided from the net revenues of the works.

(6) All such bonds shall be, shall have, and are declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments laws of the state.

(7)(A) The bonds shall be exempt from all taxation, state, county, and municipal.

(B) This exemption shall include income taxation and inheritance taxation, as well as all forms of property taxation.

(8) Provisions may be made for the registration of any of the bonds in the name of the owner as to principal alone.

(b) Bonds shall be executed in the same manner as other bonds issued by municipalities are executed.

(c)(1) The bonds shall be sold by the sewer committee in such manner as may be determined to be for the best interests of the municipality and subject to the approval of the municipal council or the committee.

(2) Any surplus of bond proceeds over and above the cost of the works shall be paid into the sinking fund provided for in § 14-235-221.

(3) If the proceeds of the bonds, by error or calculation or otherwise, shall be less than the cost of the works, additional bonds may in like manner, be issued to provide the amount of the deficit and, unless otherwise provided in the ordinance authorizing the issuance of the bonds first issued or in the trust indenture executed in connection with them, shall be deemed to be the same issue as the antecedent bonds, secured by a lien of equal rank and in all other respects upon a parity with them.

(4) Prior to the preparation of the definitive bonds, temporary bonds may, under like restrictions, be issued with or without coupons, exchangeable for definitive bonds upon the issuance of the latter.

History. Acts 1933, No. 132, § 8; Pope's Dig., § 9984; Acts 1970 (Ex. Sess.), No. 46, § 1; 1975, No. 225, § 17; 1981, No. 425, § 17, A.S.A. 1947, § 19-4108.

CASE NOTES

Purpose of Issue.

In proceeding by city to collect delinquent sewer assessments, the defendants could not defend on ground that voters were misled by false advertising as to manner in which proceeds of bond issue were to be spent, since it was not a jurisdictional matter. Boswell v. City of Russellville, 223 Ark. 284, 265 S.W.2d 533 (1954).

14-235-217. Additional bonds authorized.

(a) The municipal council or sewer committee may provide by the ordinance authorizing the issuance of the bonds, or in the trust indenture executed in connection with it, that additional bonds may thereafter be authorized and issued, at one time or from time to time, under such limitations and restrictions as may be set forth in the ordinance or trust indenture, for the purpose of extending, improving, or bettering the works authorized under this subchapter when deemed necessary in the public interest.

(b) Unless otherwise provided in the ordinance or in the trust indenture executed pursuant to it, the additional bonds will be secured and be payable from the revenues of the works equally with all other bonds issued pursuant to the ordinance, without preference or distinc-

tion between any one (1) bond and any other bond by reason of priority of issuance or otherwise. However, any provisions of the ordinance or trust indenture subordinating the lien of subsequent issues, or otherwise regulating the priorities as between successive issues, will be controlling.

History. Acts 1933, No. 132, § 9; Pope's Dig., § 9985; A.S.A. 1947, § 19-4109.

CASE NOTES

Connection with Other Districts.

This section authorizes a city to issue bonds for additional sewer mains and plants to connect with and dispose of sewage from mains built and owned by an improvement district and not owned by the city itself. Freeman v. Jones, 189 Ark. 815, 75 S.W.2d 226 (1934).

14-235-218. Issuance of additional bonds.

Nothing contained in this subchapter shall prevent the issuance of additional bonds, from time to time, if the bonds shall be authorized by law. However, all such additional bonds shall be subordinate to bonds issued pursuant to §§ 14-235-215 — 14-235-217 in respect to the application of revenues to such additional bonds unless the additional bonds consist of revenue bonds issued under this subchapter, the issuance of which was expressly authorized in the ordinance or indenture governing prior bonds of similar character. In this event, the additional bonds and such prior bonds will have a parity of lien unless the governing ordinance or indenture shall provide to the contrary.

History. Acts 1933, No. 132, § 18; Pope's Dig., § 9994; A.S.A. 1947, § 19-4118.

14-235-219. Securing of bonds by trust indenture.

(a)(1) In the discretion of the municipal council or sewer committee, bonds issued under this subchapter may be secured by a trust indenture by and between the municipality and a corporate trustee, which may be any domestic or nonresident trust company or bank having the powers of a trust company.

(2) The trust indenture may convey or mortgage the works or any part of it.

(b) The ordinance authorizing the revenue bonds and fixing the details of it may provide that the trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality and the committee in relation to the construction or acquisition of the works and the improvement, operation, repair, maintenance, and insurance of them, and the custody, safeguarding, and application of all moneys, and may provide that the works shall be contracted for, constructed, and

paid for under the supervision and approval of consulting engineers employed or designated by the committee and satisfactory to the original bond purchasers, successors, assigns, or nominees. The bond purchasers, etc. may be given the right to require that the security given by contractors and by any depository of the proceeds of bonds or revenues of the works or other moneys pertaining to them be satisfactory to the purchasers, successors, assigns, or nominees.

(c) The indenture may set forth the rights and remedies of the bondholders or the trustee, restricting the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations.

(d) Except as otherwise provided in this subchapter, the council or committee may provide by ordinance, or in the trust indenture, for the payment of the proceeds of the sale of the bonds and the revenues of the works to such officer, board, or depository as it may determine for the custody of them and for the method of disbursement of them, with such safeguards and restrictions as it may determine.

History. Acts 1933, No. 132, § 11; Pope's Dig., § 9987; A.S.A. 1947, § 19-4111.

14-235-220. Enforcement of rights by bondholders or trustee.

(a)(1) Any holder of any bonds issued under this subchapter, or any of the coupons attached to them, and the trustee, if any, except to the extent the rights given in this subchapter may be restricted by the ordinance authorizing issuance of the bonds or by the trust indenture, may either, at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights granted under this subchapter or under the ordinance or trust indenture.

(2) A bondholder or trustee may enforce and compel performance of all duties required by this subchapter or by the ordinance or trust indenture to be performed by the municipality issuing the bonds or by the sewer committee or any officer, including the making and collecting of reasonable and sufficient charges and rates for service rendered by the works.

(b) If there is any failure to pay the principal or interest of any of the bonds on the date named for payment, any court having jurisdiction of the action may appoint a receiver to administer the works on behalf of the municipality and the bondholders or trustee, except as so restricted, with power to charge and collect, or, by mandatory injunction or otherwise, to cause to be charged and collected, rates sufficient to provide for the payment of the expenses of operation, repair, and maintenance and also to pay any bonds and interest outstanding and to apply the revenue in conformity with this subchapter and the ordinance or trust indenture.

History. Acts 1933, No. 132, § 19; Pope's Dig., § 9995; A.S.A. 1947, § 19-4119.

14-235-221. Sinking fund to pay bonds and interest.

(a)(1) At or before the issuance of any bonds under this subchapter, the municipal council shall, by ordinance, create a sinking fund for the payment of the bonds and the interest on them and the payment of the charges of banks or trust companies for making payment of the bonds or interest and shall set aside and pledge a sufficient amount of the net revenues of the works, meaning the revenues of the works remaining after the payment of the reasonable expense of operation, repair, and maintenance.

(2)(A) This amount shall be paid by the sewer committee into the sinking fund at intervals to be determined by ordinance prior to issuance of the bonds, for:

(i) The interest upon the bonds as interest shall fall due;

(ii) The necessary fiscal agency charges for paying bonds and interest;

(iii) The payment of the bonds as they fall due, or, if all bonds mature at one time, the proper maintenance of a sinking fund sufficient for the payment of them at such time; and

(iv) A margin for safety and for the payment of premiums upon bonds retired by call or purchase as provided in this subchapter, which margin, together with any unused surplus of such margin carried forward from the preceding year, shall equal ten percent (10%) of all other amounts so required to be paid into the sinking fund.

(B) Required payments shall constitute a first charge upon all the net revenues of the works.

(b)(1) Prior to the issuance of the bonds, the committee, by ordinance, may be given the right to use or direct the trustee to use the sinking fund, or any part of it, in the purchase of any of the outstanding bonds payable from it at the market price of them but not exceeding the price, if any, at which they shall, in the same year, be payable or redeemable, and all bonds redeemed or purchased shall be cancelled and shall not again be issued.

(2) After the payments into the sinking fund as required in this section, the committee, at any time, in its discretion, may transfer all, or any part, of the balance of the net revenues after reserving an amount deemed by the committee sufficient for operation, repair, and maintenance for an ensuing period of not less than twelve (12) months and for depreciation, into the sinking fund or into a fund for extensions, betterments, and additions to the works.

History. Acts 1933, No. 132, § 12; Pope's Dig., § 9988; A.S.A. 1947, § 19-4112.

14-235-222. Allocation of funds from bonds and revenues.

(a)(1)(A) Any specified portion of the proceeds of an issue of bonds authorized under this subchapter may be allocated by the municipal council to any particular project, or to new construction, as distinguished from the purchase of works already constructed, or vice versa.

(B)(i) After such allocation, the designated portion of the proceeds of the bond issue shall be kept separate and apart from the remaining proceeds and shall be held by the municipality in trust for the performance of the purposes specified, and none other.

(ii) The diversion of the funds to any other purpose may be enjoined on the suit of the trustee under the indenture securing the bonds, or on the suit of any of the bondholders, or on the suit of any person whose property, under the ordinance of the council, is to be served by the proposed works.

(2) In making the allocation, the council will be controlled by the engineer's estimate of cost referred to in the initial ordinance.

(b)(1)(A) In the event of such allocation or proceeds, the bonds themselves may be similarly and correspondingly segregated and allocated to the respective purposes of the issue.

(B) Bonds segregated and allocated to one purpose, from the standpoint of legality and in all other respects, shall be deemed to have been issued to finance such purpose, and that alone.

(2)(A) Notwithstanding such allocation and segregation, all bonds of the entire issue, unless the initial ordinance and the indenture securing the bonds shall provide to the contrary, will be secured ratably and equally by the revenues of the entire and aggregate works financed by the bond issue.

(B) Unless the ordinance and indenture shall so specifically provide, the allocation of bond proceeds or segregation of bonds mentioned will never have the effect of allocating the revenues from any particular portion of the authorized works exclusively to any particular bonds.

History. Acts 1933, No. 132, § 10; Pope's Dig., § 9986; A.S.A. 1947, § 19-4110.

CASE NOTES

Analysis

Assignments.
Refunds.
Scope.

Assignments.

Subcontractor has a right against a bank to have money deposited in it as a sewer construction fund impounded where a contractor has assigned to the subcontractor money allegedly due from such fund. Robinson v. City of Pine Bluff, 224 Ark. 791, 276 S.W.2d 419 (1955).

Refunds.

No refunds were required where there had not been a proper audit and accounting of the affairs of the sewer district, it would cost more than the amount of money on hand to have an accounting for refund purposes, the city already spent far

more than such sum turned over to it in maintaining the system, the city having been operating and maintaining this system out of general revenues with no expenses to the district, and the desire for audit of the accounts was made after the retirement of the bonds issued for the maintenance of the sewer. Lawrence v. Jones, 228 Ark. 1136, 313 S.W.2d 228 (1958).

Scope.

This section contemplates that revenue bonds authorized to construct sewers will be paid from the revenues derived from that service and nothing in this subchapter authorizes any part of the revenues derived from the system to be devoted and appropriated to pay the cost of construction or operation of waterworks system. Mathers v. Moss, 202 Ark. 554, 151 S.W.2d 660 (1941).

14-235-223. Rates and charges for services — Lien.

(a)(1) The council of the municipality shall have power, and it shall be its duty, by ordinance to establish and maintain just and equitable rates or charges for the use of and the service rendered by the works, to be paid by each user of the sewerage system of the municipality.

(2) The council may change and readjust the rates or charges from time to time to such extent as will not render insecure the rights of the holders of revenue bonds or violate any sinking fund agreement, or other lawful agreement, with such bondholders.

(b) The rates or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements, and maintenance of the works and for the payment of the sums required in this subchapter to be paid into the sinking fund.

(c) Revenues collected pursuant to this section shall be deemed the revenues of the works.

(d)(1)(A) No rates or charges shall be established until after a public hearing, at which all the users of the works and owners of property served or to be served by them and others interested shall have opportunity to be heard concerning the proposed rates or charges.

(B) After introduction of the ordinance fixing the rates or charges, and before the ordinance is finally enacted, notice of the hearing, setting forth the proposed schedule of the rates or charges, shall be given by one (1) publication in a newspaper published in the municipality if there is such a newspaper, but otherwise in a newspaper having general circulation in the municipality, at least ten (10) days before the date fixed in the notice for the hearing, which may be adjourned from time to time.

(2) After the hearing the ordinance establishing rates or charges, either as originally introduced or as modified and amended, shall be passed and put into effect.

(e) A copy of the schedule of the rates and charges established shall be kept on file in the office of the sewer committee having charge of the operation of the works, and also in the office of the municipal clerk or recorder, and shall be open to inspection by all parties interested.

(f)(1) The rates or charges so established for any class of users or property served shall be extended to cover any additional premises

thereafter served which fall within the same class, without the necessity of any hearing or notice.

(2)(A) Any change or readjustment of the rates or charges may be made in the same manner as the rates or charges were originally established as provided in this section.

(B) If the change or readjustment is made substantially pro rata as to all classes of service, no hearing or notice shall be required.

(g) The aggregate of the rates or charges shall always be sufficient for the expense of operation, repair, and maintenance and for the sinking fund payments.

(h) If any service rate or charge established shall not be paid within thirty (30) days after it is due, the amount of it, together with a penalty of ten percent (10%) and a reasonable attorney's fee, may be recovered by the sewer committee in a chancery suit, filed in the chancery court of the county where the works, or the greater part of them, shall be located, in the name of the municipality or in the name of the trustee under the indenture securing the revenue bonds, or in the name of the bondholders, to such extent as their right to sue in their own name may be permitted under the trust indenture.

History. Acts 1933, No. 132, § 13; Pope's Dig., § 9989; Acts 1985, No. 290, § 1; A.S.A. 1947, § 19-4113.

Cross References. Rate-making authority, § 23-4-201.

CASE NOTES

Analysis

In general.
Notice.
Penalty.
Publication.
Rate-making.
Referendum.
Refunds.

In General.

This section is not objectionable as requiring the owner to discharge another's obligation. Jernigan v. Harris, 187 Ark. 705, 62 S.W.2d 5 (1933).

Notice.

Notice published 10 days before enactment of ordinance establishing rates for use of proposed sewage disposal plant is sufficient to advise property owners how they would be affected by the proposed rates. Carpenter v. City of Paragould, 198 Ark. 454, 128 S.W.2d 980 (1939).

Penalty.

Provisions if any service rate or charge should not be paid within 30 days after due a penalty and reasonable attorney's fee may be recovered by the sewer committee is penal in its nature and must be strictly construed; therefore the trial court will be granted a reasonable discretion in denying or allowing such penalty depending on the circumstances. Lamar Bath House Co. v. City of Hot Springs, 229 Ark. 214, 315 S.W.2d 884 (1958), appeal dismissed, 359 U.S. 534, 79 S. Ct. 1137, 3 L. Ed. 1028 (1959).

Publication.

There is no constitutional provision or amendment which would allow a city to ignore this section and § 14-55-206 when establishing or changing its sewer rates. Invalidity of municipal ordinance for failure to comply with this section and § 14-55-206 was not cured by subsequent publication of ordinance. City of Ft. Smith v. O.K. Foods, Inc., 293 Ark. 379, 738 S.W.2d 96 (1987).

Rate-Making.

Ordinance establishing rates for the use of proposed sewage disposal plant was held properly enacted though introduced at a special meeting of the council not

called for that purpose. Carpenter v. City of Paragould, 198 Ark. 454, 128 S.W.2d 980 (1939).

Rate-making being a legislative act, unless the city council has acted arbitrarily and unreasonably in fixing its rates, there is a prima facie presumption in favor of their correctness, and the burden is on complainant to show otherwise. Lawrence v. Jones, 228 Ark. 1136, 313 S.W.2d 228 (1958).

City did not have alternative authority to change its sewer rates under § 14-200-101 et seq. and ignore the pre-enactment notice and public hearing requirements of this section. City of Ft. Smith v. O.K. Foods, Inc., 293 Ark. 379, 738 S.W.2d 96 (1987).

Referendum.

The action of a city council in enacting sewer ordinances is legislative and therefore subject to a referendum and the vote of all the electorate as a city under Ark. Const. Amend. 7 Lawrence v. Jones, 228 Ark. 1136, 313 S.W.2d 228 (1958).

Refunds.

Customers were entitled to refund of all the increased sewer charges paid pursuant to a municipal ordinance which was invalid because the city failed to comply with the requirements of this section and § 14-55-206. City of Ft. Smith v. O.K. Foods, Inc., 293 Ark. 379, 738 S.W.2d 96 (1987).

14-235-224. Service payments by municipalities.

(a) A municipality shall be subject to the same charges and rates established as provided in § 14-235-223, or to charges and rates established in harmony with them, for service rendered the municipality and shall pay the rates or charges when due from corporate funds.

(b) The payments shall be deemed to be a part of the revenues of the works as defined in this subchapter and shall be applied as provided in this subchapter for the application of such revenues.

History. Acts 1933, No. 132, § 14; Pope's Dig., § 9990; A.S.A. 1947, § 19-4114.

14-235-225. Authority for joint undertaking.

(a) Any city of the first class having a city manager form of government and divided by a state line shall have the authority to join in the purchase, construction, and operation of a sewage system with the adjoining city in another state for each of the municipalities, and to execute an agreement for the joint obligation of the municipalities and secure the payment thereof by a joint pledge of the net revenues derived from the operation of the sewage systems.

(b) The municipalities shall employ a joint manager for the operation of the sewage system who shall be hired by the city managers of the municipalities and who shall serve under the direct supervision of the city managers jointly.

History. Acts 1989, No. 607, § 2.

A.C.R.C. Notes. References to "this subchapter" in §§ 14-235-201 — 14-235-224 may not apply to this section which was enacted subsequently.

Subchapter 3 — Sewer Connections by Property Owners

SECTION.
14-235-301. Penalties.
14-235-302. Ordering property owners to connect.
14-235-303. Refusal of owner to connect.
14-235-304. Restrictions on connections.
14-235-305. Tapping of sewers.

14-235-301. Penalties.

(a)(1) It is declared a misdemeanor for any person to injure, damage, destroy, or fail or refuse to connect with or tap the sewers of a municipality, within the time prescribed by an order of the municipal board of health, any sewer, public or private, made under the provisions of this act.

(2)(A) Any person so offending, on conviction, shall be punished by fine and imprisonment, or both, at the discretion of the court, in any sum not more than five hundred dollars ($500), and for a period not longer than six (6) months.

(B)(i) An offender shall also be liable for all damages which shall be found by the jury.

(ii) The sum so found, judgment shall be rendered in favor of the municipality, and execution shall issue on it as on other judgments at law.

(b)(1) A city council shall have power, by ordinance, to compel all sewers built by private parties or under the direction of the municipal board of health to be kept clean and in repair, by fine and punishment of the party in possession as owner or lessee of the property where the sewer may be situated.

(2) The fine shall not exceed fifty dollars ($50.00) for any one (1) neglect, nor shall the imprisonment be more than ninety (90) days.

History. Acts 1881, No. 84, § 18, p. 161, 1907, No. 346, § 1, p. 834; C. & M. Dig., §§ 7542, 7543; Pope's Dig., §§ 9617, 9618; A.S.A. 1947, §§ 19-4129, 19-4130.

Meaning of "this act". Acts 1881, No. 84, codified as §§ 14-88-101, 14-88-202, 14-88-204, 14-88-302, 14-88-305 — 14-88-308, 14-88-311, 14-88-403, 14-88-502, 14-89-201, 14-89-1001, 14-89-1002, 14-90-101, 14-90-201, 14-90-302, 14-90-403, 14-90-701, 14-90-801 — 14-90-805, 14-90-902, 14-90-903, 14-90-916, 14-90-1001 — 14-90-1003, 14-90-1005, 14-90-1006, 14-90-1101 — 14-90-1106, 14-90-1108, 14-90-1201 — 14-90-1204, 14-90-1302, 14-90-1303, 14-91-101, 14-91-104 — 14-91-107, 14-91-201, and 14-235-301 — 14-235-305.

14-235-302. Ordering property owners to connect.

(a) After the completion of any sewer or branch sewer authorized to be built under the provisions of this act, it shall be lawful for the board of health of any municipality to which this act is applicable, whenever, in their opinion, the public health will be promoted by it, to order any one (1) or more property owners near or adjacent to any sewer to construct upon their property sewers leading from some point or place on their premises to the sewer of the municipality for the purpose of:

(1) Draining off surface or other water; and

(2) Conducting any excrement that may be at or about the premises and filth of every nature, character, and description into the sewers belonging to the municipality.

(b) In the order issued to construct the sewers for the purpose presented, the time within which they are to be completed, the nature and character of the material to be used in the construction of them, and the place of tapping the sewers of the municipality shall be designated, as well as the manner of doing it.

History. Acts 1881, No. 84, § 18, p. 161; C. & M. Dig., § 7537; Pope's Dig., § 9612; A.S.A. 1947, § 19-4125.

Meaning of "this act". See note to § 14-235-301.

Cross References. Authority to require drainage of land, § 14-54-602.

CASE NOTES

Order of Board.

The board of health may direct property owners to make connections with adjacent sewers, with a provision that, upon their failure to make such connection, it shall be the duty of the board of health to have it made and to charge the property therewith, and to enforce payment of the cost against the property by suit in chancery court. Jernigan v. Harris, 187 Ark. 705, 62 S.W.2d 5 (1933).

Cited: Short v. Smithy, 224 Ark. 363, 273 S.W.2d 393 (1954).

14-235-303. Refusal of owner to connect.

(a)(1) If the owner of property shall fail, neglect, or refuse to connect the sewer as ordered in § 14-235-302, within the time prescribed in the order, unless further time is granted for the completion of the sewer, it shall be the duty of the municipal board of health to cause the sewer to be constructed, by contract or otherwise, in as economic and substantial a manner as may be practicable.

(2) For that purpose, the board is authorized to enter upon, by its agents, contractors, and employees, any property on which they may order a sewer to be constructed, doing as little damage as possible.

(b)(1) When the construction shall have been completed and the cost ascertained, it shall become a charge and lien upon the property.

(2)(A) The board is authorized and empowered to institute suit in any court having jurisdiction to enforce liens against real property, in the manner designated in § 14-90-1002 for the commencement of suits by the board of improvement, for the purpose of making the property chargeable for the lien provided in this section and the amount of the construction of the sewer, together with twenty percent (20%) penalty for noncompliance with the order of the board.

(B)(i) When a decree shall have been obtained, the property shall be ordered sold in the manner provided in §§ 14-90-1101 — 14-90-1108 and 14-90-1201 — 14-90-1204 for the sale of property.

(ii) All appeals from decrees to the Supreme Court of Arkansas rendered against property under this section shall be prosecuted within the time and under the restrictions and limitations set forth in

this act, and no injunction shall be issued by any court restraining the building of any sewer ordered by the board.

(c)(1) All notices and summons required in this section shall be served in the manner provided in § 14-90-1003, against resident as well as nonresident owners of property; and

(2)(A) The court shall be open, as stated in § 14-90-1001;

(B) The same preference shall be given to suits commenced under this section; and

(C) The same summary mode of proceeding shall be adopted in pleading and in all matters relating to the enforcement of the lien.

History. Acts 1881, No. 84, § 18, p. 161; C. & M. Dig., §§ 7538, 7539; Pope's Dig., §§ 9613, 9614; A.S.A. 1947, § 19-4126.

Meaning of "this act". See note to § 14-235-301.

CASE NOTES

Record of Proceedings.

It is necessary that the proceedings of the board of health be entered of record in order to bind the property owner. Dinning v. Moore, 90 Ark. 5, 117 S.W. 777 (1909).

14-235-304. Restrictions on connections.

Nothing in this act shall be so construed as to authorize a municipal board of health to order or compel the building of a sewer by one property owner over the property of another, or for a greater distance from his property through or into any street or alley than three hundred feet (300′), to a place where a connection can be made with a sewer.

History. Acts 1881, No. 84, § 18, p. 161; C. & M. Dig., § 7540; Pope's Dig., § 9615; A.S.A. 1947, § 19-4127.

Meaning of "this act". See note to § 14-235-301.

CASE NOTES

ANALYSIS

Constitutionality.
Distance to connection.

Constitutionality.

This section is a valid enactment within the police power of the state. Bennett v. City of Hope, 204 Ark. 147, 161 S.W.2d 186 (1942).

Distance to Connection.

Ordinance attempting to require a property owner to connect with a sewer line though more than 300 feet from sewer connection was held invalid. Bennett v. City of Hope, 204 Ark. 147, 161 S.W.2d 186 (1942).

City could not prevent construction of building which the owner proposed to equip with approved toilet facilities where no sewer was provided within 300 feet therefrom, unless proposed construction was per se dangerous to public health and safety. Bennett v. City of Hope, 204 Ark. 147, 161 S.W.2d 186 (1942).

14-235-305. Tapping of sewers.

(a) The city council shall regulate, by ordinance, the terms, time, and manner, and the compensation which shall be paid by the private parties not building sewers under orders of the municipal board of health under this act, upon compliance with which the parties may tap the sewers of the municipality.

(b) No person shall be allowed to tap any sewer without paying in proportion to the value of his property to be benefited by it, as compared with the value of the property taxed in the district and the actual cost of the sewer.

History. Acts 1881, No. 84, § 18, p. 161; 1889, No. 18, § 4, p. 17; C. & M. Dig., § 7541; Pope's Dig., § 9616; A.S.A. 1947, § 19-4128.

Meaning of "this act". See note to § 14-235-301.

CASE NOTES

ANALYSIS

Compliance required.
Connection charges.
Implied indemnity.

Compliance Required.

A system of sewers constructed by private enterprise cannot connect with the sewer of a sewer improvement district until the former has complied with the terms of this section. Peay v. Kinsworthy, 126 Ark. 323, 190 S.W. 565 (1916).

Connection Charges.

The costs of connection apportioned on the basis of the total cost of the whole outfall system of the sewer district is equitable. Sloss v. Turner, 175 Ark. 994, 1 S.W.2d 993 (1928).

Implied Indemnity.

Allegations in third party complaint were sufficient to state a cause of action under law for implied indemnity despite exclusivity provisions of the Workers' Compensation Act as the facts pled were sufficient to bring the parties within the provisions of this section which created a special relationship between municipal employer of man killed when sewer-line trench collapsed, and third party independent contractor who dug the sewer-line trench by operation of law. By virtue of this section and the employer's policies, the construction necessary to connect homeowner's sewer to the city's main was under employer's supervision and control, and implicit in the terms of the special relationship was a duty by the employer to supervise and conduct the construction in such a way as to insure the safety of its employees and others working on the construction, including the implied promise that the employer would indemnify third party for any damages he is made to pay as a result of the employer's negligence. Smith v. Paragould Light & Water Comm'n, 303 Ark. 109, 793 S.W.2d 341 (1990).

CHAPTER 236

ARKANSAS SEWAGE DISPOSAL SYSTEMS ACT

SECTION.
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14-236-117. Duty to prosecute.
14-236-118. Fees for tests, designs, and inspections.

Cross References. Local government reserve funds, § 14-73-101 et seq.

Wastewater treatment districts, § 14-250-101 et seq.

Effective Dates. Acts 1977, No. 402, § 17: July 1, 1977. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that a large number of the citizens of this State are not serviced by community sewage disposal systems and are therefore required to install individual septic tank systems by necessity and that many such septic tank systems are not adequate and that legislation such as this is urgently needed to aid and assist the citizens of this State in obtaining and identifying proper septic tank systems. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force on July 1, 1977."

Acts 1981, No. 484, § 3: Mar. 13, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 402 of 1977 which prescribes certain minimum design, construction and installation standards for individual sewage disposal systems specifically exempted certain of such systems which were in existence on the effective date of this Act or which were installed in a subdivision wherein lots had been sold for use with individual sewage disposal systems prior to the effective date of this Act, or individual sewage disposal systems to be installed on a residential lot for which the Department of Health or its authorized agent has issued a construction permit on or before the effective date of this Act; that the Act neglected to exempt certain individual sewage disposal systems installed prior to the Act or specifically installed on a residential lot in a subdivision for which a master plan had been approved by the Department of Pollution Control and Ecology; that this Act is designed to include installations on lots in subdivisions which have been approved by the Department of Pollution Control and Ecology and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 708, § 3: Mar. 23, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to the types of soil in various areas of this State, individual sewage disposal systems adaptable to the soil of a certain area will not work satisfactorily in the soil of another area; that the future growth and expansion of the State is dependent upon the development of the necessary technology to provide a variety of individual sewage disposal systems adaptable to meet the different soil conditions that exist throughout the State; that the establishment of an Advisory Committee on Individual Sewage Disposal Systems is necessary to establish technical advice and assistance to the Division of Sanitarian Services of the Department of Health, and additional funds must be provided to enable the Division to offer leadership and technical assistance

to encourage individual property owners to install sewage disposal systems that the Division has approved as being adaptable to the areas in which they are to be located; and that the immediate passage of this Act is necessary to accomplish such purpose. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its approval."

Acts 1987, No. 435, § 6: Mar. 26, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to current revenue short falls the services offered by the Department of Health to the citizens of this state are threatened; that an equitable method of maintaining these services is to provide for additional fees to be paid by those citizens who request the assistance of the State Department of Health; that this act is designed to provide for the collection of additional fees and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 179, § 38: Feb. 17, 1997 Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

14-236-101. Title.

This chapter shall be known and may be cited as the "Arkansas Sewage Disposal Systems Act."

History. Acts 1977, No. 402, § 1; A.S.A. 1947, § 19-5401.

14-236-102. Findings, policy, and intent.

(a) The General Assembly finds and determines that:

(1) Safe and adequate sewage disposal promotes the health and welfare of the citizens of this state by minimizing the exposure of the citizens, farm animals, domestic animals, fish, and wildlife of this state to human excreta and domestic wastes and thus minimizing the disease transmission potential of human excreta and domestic wastes, by minimizing the contamination of drinking water supplies and the hazards to recreational areas of this state, and by minimizing the pollution of other ground and surface waters of this state;

(2) Individual sewage disposal systems, when properly designed and constructed in suitable soils, provide renovation of waste water and inject the renovated waste water back into the hydrologic cycle;

(3) Community sewage systems are preferable for densely developed portions of cities, towns, subdivisions, mobile home parks, and other built up areas because the concentration of individual sewage disposal systems could increase the degree of contamination of local ground and surface waters and could increase the exposure of the citizens of this state to human excreta and other domestic wastes while community sewerage systems permit the location of sewage treatment and disposal facilities in areas remote from the population;

(4) In densely developed subdivisions located outside incorporated areas, property owners associations have been formed for the purpose of constructing and maintaining community sewage systems and that authorization from the state granting jurisdiction over nonincorporated community sewage systems is desirable to insure that the property owners associations shall qualify for state and federal assistance;

(5) In some areas of this state, the soil is not suitable for normal underground sewage disposal, and that the improper and unapproved construction or installation of individual septic systems has created conditions throughout the state that are dangerous to the public health of the citizens of Arkansas and has contributed to the devaluation of properties.

(b) Therefore, it is the public policy of this state and the purpose of this chapter to:

(1) Eliminate and prevent health hazards by regulating the location, design, construction, installation, operation, and maintenance of individual sewage disposal systems and the proper planning thereof, and to authorize the charging and collection of fees for the issuance of permits for the construction, installation, alteration, repair, extension, and operation of individual sewage disposal systems, and for the tests, designs, and inspections of the systems, and to prescribe penalties for violations;

(2) Require registration of all installers of individual sewage disposal systems by the Division of Sanitarian Services of the Department of Health, with the individual homeowner retaining all rights to install and repair his system in accordance with the provisions of this chapter;

(3) Encourage the use of community sewage systems when economically feasible wherever density of development or the lack of acceptable soils makes the renovation of waste water and the return of the renovated waste water to the hydrologic cycle by individual sewage disposal systems impractical;

(4) Encourage research and development by institutions, agencies of government, or persons to develop modifications to, or alternates for, septic tank systems which will be improvements to the systems, or which will make the systems applicable to soils not suitable for normal underground sewage disposal; and

(5) Permit the rules and regulations adopted pursuant to this chapter to be amended periodically to include therein such proposed modifications and alternates as are approved by the State Board of Health.

(c) Furthermore, it is the intent of this chapter to aid and assist the citizens of this state in obtaining safe and adequate individual sewage disposal systems.

History. Acts 1977, No. 402, § 2; A.S.A. 1947, § 19-5402.

14-236-103. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Community sewage system" means any system, whether publicly or privately owned, serving two (2) or more individual lots, for the collection and disposal of sewage or industrial wastes of a liquid nature, including various devices for the treatment of the sewage or industrial wastes;

(2) "Department" means the Division of Sanitarian Services of the Department of Health;

(3) "Homeowner" means a person who owns and occupies a building as his home;

(4) "Industrial wastes" means liquid wastes resulting from the processes employed in industrial and commercial establishments;

(5) "Individual sewage disposal system" means a single system of treatment tanks, disposal facilities, or both, used for the treatment of domestic sewage, exclusive of industrial wastes, serving only a single dwelling, office building, or industrial plant or institution;

(6) "Installer" means any person, firm, corporation, association, municipality, or governmental agency who for compensation constructs, installs, alters, or repairs individual sewage disposal systems for others;

(7) "Municipality" means a city, town, county, district, or other public body created by or pursuant to state law, or any combination thereof acting cooperatively or jointly;

(8) "Person" means any institution, public or private corporation, individual, partnership, or other entity;

(9) "Potable water" means water free from impurities in an amount sufficient to cause disease or harmful physiological effects, with the bacteriological and chemical quality conforming to applicable standards of the State Board of Health;

(10) "Property owners association" means an association created by and pursuant to state law and organized for the purpose of maintaining common facilities, including sewage disposal facilities in unincorporated subdivisions;

(11) "Domestic sewage" means all wastes discharging from sanitary conveniences and plumbing fixtures of a domestic nature, exclusive of industrial and commercial wastes;

(12) "Subdivision" means land divided or proposed to be divided for predominantly residential purposes into such parcels as required by local ordinances or, in the absence of local ordinances, the term "subdivision" means any land which is divided or proposed to be divided

by a common owner or owners for predominantly residential purposes into three (3) or more lots or parcels, any of which contain less than three (3) acres, or into platted or unplatted units any of which contain less than three (3) acres, as a part of a uniform plan of development;

(13) "Authorized agent" means the sanitarian assigned to the county or local area by the Division of Sanitarian Services of the Department of Health;

(14) "Designated representative" means a person designated by the authorized agent to make percolation tests, system designs, and inspections subject to the authorized agent's final approval. Designated representatives shall be registered professional engineers, registered land surveyors, licensed master plumbers, registered sanitarians, or other similarly qualified individuals holding current certificates from the State of Arkansas, and shall demonstrate to the satisfaction of the authorized agent prior to their designation as a designated representative their competency to make percolation tests, designs, and final inspections for individual sewage disposal systems in accordance with the rules and regulations promulgated pursuant to this chapter;

(15) "Alternate and experimental system" means a nonstandard individual sewage disposal system or treatment system which is classified as experimental in order to evaluate its potential effectiveness;

(16) "Septic tank manufacturer" means a person, firm, corporation, or association who manufactures septic tanks, package treatment plants, or other components for individual sewage disposal or treatment systems.

History. Acts 1977, No. 402, § 3; A.S.A. 1947, § 19-5403; Acts 1987, No. 435, § 1.

14-236-104. Certain individual systems excepted from chapter.

(a)(1) No individual sewage disposal system in existence on July 1, 1977, nor any individual sewage disposal system installed after July 1, 1977, in a subdivision, wherein individual lots have been developed or sold for use with individual sewage disposal systems, for which a plat has been filed of record prior to July 1, 1977, shall be required to conform to more stringent specifications and requirements as to design, construction, density of improvements, lot size, and installation than those standards contained in any applicable, duly adopted, and published regulation in effect at the time of platting of record of the subdivision.

(2) No individual sewage disposal system to be installed on a residential lot for which the department or its authorized agent has issued a construction permit on or before July 1, 1977, shall be required to conform to the design, construction, and installation provisions of this chapter, or any rules and regulations adopted pursuant thereto.

(3) In a subdivision for which a master plan has been approved by the Department of Health or the Department of Pollution Control and

Ecology prior to July 1, 1977, or for which the Department of Health or the Department of Pollution Control and Ecology has otherwise previously issued its written approval for the installation of individual sewage disposal systems and where individual lots have been developed or sold in reliance upon the prior written approval, individual sewage disposal systems shall not be required to conform to more stringent specifications as to design, construction, and installation than those standards in effect at the time of, or referred to in, the prior written approval.

(b) However, any individual sewage disposal system which is determined by the Division of Sanitarian Services of the Department of Health to be a health hazard or which constitutes a nuisance due to odor or unsightly appearance must conform with the provisions of this chapter and applicable rules and regulations within a reasonable time after notification that the determination has been made.

(c) The requirements of this chapter shall not apply to any individual sewage disposal system or alternate and experimental system which is situated on a tract of land ten (10) acres or larger, in which the field line or sewage disposal line is no closer than two hundred feet (200′) to the property line.

History. Acts 1977, No. 402, §§ 7, 9; 1981, No. 484, § 1; A.S.A. 1947, §§ 19-5407, 19-5409; Acts 1987, No. 435, § 2.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: "'Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality'. (a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

14-236-105. Interpretation with other laws.

The provisions of any law or regulation of any municipality establishing standards affording greater protection to the public health or safety shall prevail within the jurisdiction of the municipality over the provisions of this chapter and regulations adopted hereunder.

History. Acts 1977, No. 402, § 13; A.S.A. 1947, § 19-5413.

14-236-106. Penalties.

(a)(1) A person who shall willingly and knowingly violate the provisions of this chapter shall be liable to the party aggrieved or damaged by that violation for the cost of suit, including a reasonable attorney's fee, actual damages, and additional punitive damages equal to twenty-five percent (25%) of the damages proven by the aggrieved party, to be taxed by the court where the suit is heard on an original action, by appeal, or otherwise, and recovered by a suit at law in any court of competent jurisdiction. However, the party aggrieved or damaged thereby must give twenty (20) days' written notice of any violation of this chapter to the violator.

(2) Approval by the Division of Environmental Health Protection of the Department of Health or its authorized agent of a requested variation from the rules and regulations adopted pursuant to this chapter shall not be construed as a violation of this chapter.

(b) The Division of Environmental Health Protection of the Department of Health or its authorized agent is authorized to require the property owner to take the necessary action to correct the malfunctioning individual sewage disposal system within thirty (30) working days of being notified. Failure to take corrective action shall constitute a violation of this chapter.

(c)(1) Any person, firm, corporation, or association who violates any of the provisions of this chapter or any rules and regulations promulgated under the authority of this chapter shall, upon conviction, be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(2)(A) Every firm, person, or corporation who violates any of the provisions of this chapter or rules, regulations, or orders issued or promulgated by the State Board of Health or who violates any condition of a license, permit, certificate, or any other type of registration issued by the board may be assessed a civil penalty by the board.

(B)(i) The penalty shall not exceed one thousand dollars ($1,000) for each violation.

(ii) Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessments.

(3) All fines collected under subdivision (c)(1) of this section shall be deposited in the State Treasury and credited to the Public Health Fund to be used to defray costs of administering this chapter.

(4) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health is authorized to transfer all unexpended funds relative to fines collected under this section, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1977, No. 402, § 10; A.S.A. 1947, § 19-5410; Acts 1987, No. 435, § 3; 1991, No. 873, § 1; 1993, No. 182, § 1; 1995, No. 786, § 1.

Amendments. The 1993 amendment substituted "Environmental Health Protection" for "Sanitarian Services" in (a)(2); rewrote (b); and, in (c), deleted "with the exception of the homeowner" following "association" and substituted "one thousand dollars ($1,000)" for "five hundred dollars ($500) or by imprisonment not exceeding one (1) month, or both."

The 1995 amendment added (c)(2)-(4).

CASE NOTES

Cited: McPeek v. White River Lodge Enters., 325 Ark. 68, 924 S.W.2d 456 (1996).

14-236-107. Division of Sanitarian Services — Powers and duties.

(a) The Division of Sanitarian Services of the Department of Health or its authorized agents shall have general supervision and authority over the location, design, construction, installation, and operation of individual sewage disposal systems, and shall be responsible for the administration of this chapter and of the rules and regulations adopted pursuant to this chapter.

(b) In order to assure the effective and efficient administration of the provisions and purposes of this chapter, the Division of Sanitarian Services of the Department of Health is authorized to:

(1) After review by the House and Senate Interim Committees on Public Health, Welfare, and Labor or appropriate subcommittees thereof adopt, and from time to time amend, rules and regulations governing the review and approval of subdivisions proposing to utilize individual sewage disposal systems as the means of sewage disposal for part or all of the lots in the subdivision and the location, design, construction, installation, and operation of individual sewage disposal systems proposed for or located in subdivisions or in platted or unplatted lots or tracts of land pursuant to the procedures provided in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., in order that the wastes from the systems will not pollute any potable water supply, or source of water used for public or domestic supply purposes, or for recreational purposes, or other waters of this state, and will not give rise to a public health hazard by being accessible to insects, rodents, or other possible carriers which may come into contact with food or potable water, or by being accessible to human beings, and will not constitute a nuisance due to odor or unsightly appearance;

(2) Include a provision in all rules and regulations adopted or amended under this chapter to encourage studies and alternate submissions by engineers, sanitarians, institutions, agencies, and other persons of economically feasible alternate systems for underground and above ground individual sewage disposal systems for use in soils not suitable for normal underground sewage disposal;

(3) Include in rules and regulations adopted pursuant to this chapter, definitions and detailed descriptions of good management practices

and procedures which, when utilized in the construction of septic systems, will:

(A) Justify variation in field size or in other standard requirements;

(B) Promote the use of good management practices or procedures in the construction of septic systems by adopting under the rules and regulations promulgated under this chapter standard permissible reductions in field size which may be applied when the management practices or procedures are utilized in the construction of a septic system;

(C) Require the utilization of one (1) or more specific management practices or procedures as a condition of approval of standard septic systems where, in the opinion of the authorized agent, unusual site conditions or problems require the additional management practices or procedures to ensure the proper operation of an otherwise standard septic system;

(4) Enforce the provisions of this chapter and any rules and regulations adopted pursuant thereto;

(5) Delegate, at its discretion, to any municipality or, in the case of an unincorporated subdivision, the property owners association, any of its authority under this chapter in the administration of the rules and regulations adopted pursuant to this chapter;

(6) Issue permits, and other documents, including the establishment and collection of permit fees and of procedures and forms for the submission, review, approval, and rejection of application for permits required under this chapter.

History. Acts 1977, No. 402, § 5; A.S.A. 1947, § 19-5405; Acts 1997, No. 179, § 9.

A.C.R.C. Notes. The punctuation in the 1997 amendment to this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

Amendments. The 1997 amendment, in (b)(1), substituted "House and Senate Interim Committees" for "Joint Interim Committee," and inserted "or appropriate subcommittees thereof."

14-236-108. Division of Sanitarian Services — Nonliability.

The Division of Sanitarian Services of the Department of Health and its authorized agents, when performing their duties as prescribed by established policies and procedures, are exempt from any liability for damages or claims resulting from its approval or disapproval of the installation or operation of any individual sewage disposal system.

History. Acts 1977, No. 402, § 14; A.S.A. 1947, § 19-5414; Acts 1987, No. 435, § 4.

14-236-109. Property owners' associations — Powers and duties.

Property owners' associations that construct and maintain or have constructed and maintained sewage disposal facilities in accordance with standards and regulations established by the Division of Sanitarian Services of the Department of Health or the Department of Pollution Control and Ecology shall have jurisdiction over the disposal of sewage within and for the subdivided area over which their authority extends, and shall have general supervision and authority over the location, design, construction, installation, and operation of individual and community sewage disposal systems to the extent that the general supervision and authority is consistent with this chapter and the rules and regulations promulgated thereunder.

History. Acts 1977, No. 402, § 6; A.S.A. 1947, § 19-5406.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: "'Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality' (a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

14-236-110. Construction, alteration, repair prohibited.

No person shall construct, alter, repair, or extend or cause to be constructed, altered, repaired, or extended any individual sewage disposal system contrary to the provisions of this chapter and other applicable rules and regulations.

History. Acts 1977, No. 402, § 4; A.S.A. 1947, § 19-5404.

14-236-111. Review of proposals and inspections.

(a) The Division of Sanitarian Services of the Department of Health or its authorized agent is authorized and directed to review proposals for individual sewage disposal systems and to make inspections of individual sewage disposal systems as may be necessary to determine substantial compliance with this chapter and regulations adopted hereunder. The systems shall not be used unless approved by the Division of Sanitarian Services of the Department of Health or its authorized agent.

(1) In the event that an authorized agent has not been designated for a county or municipality or locality, applications for individual sewage disposal systems shall be made to the Division of Sanitarian Services of the Department of Health.

(2) Upon the basis of inspections, the Division of Sanitarian Services of the Department of Health or its authorized agent shall either approve or disapprove the individual sewage disposal system, and, if disapproved, the system shall not be used until all deficiencies are corrected and the system reinspected and approved by the Division of Sanitarian Services of the Department of Health or its authorized agent.

(b) It shall be the duty of the holder of a permit issued pursuant to this section to notify the Division of Sanitarian Services of the Department of Health, its authorized agent, or his designated representative when the installation is ready for inspection and it shall be the duty of the owner or occupant of the property to give the Division of Sanitarian Services of the Department of Health, its authorized agent, or his designated representative free access to the property at reasonable times for the purpose of making such inspections as are necessary.

(c) In the event an inspection is not made within two (2) working days from the date of notification to the Division of Sanitarian Services of the Department of Health, its authorized agent, or his designated representative that the installation is completed and ready for inspection, the system shall be deemed approved.

(d) Any person aggrieved by the disapproval of an individual sewage disposal installation shall be afforded review as provided in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1977, No. 402, § 8; A.S.A. 1947, § 19-5408.

14-236-112. Permit and registration required — Exception.

(a) It shall be unlawful for any person, firm, corporation, association, municipality, or governmental agency to construct, alter, repair, extend, or operate an individual sewage disposal system or alternate and experimental system installed after July 1, 1977, unless a valid permit has been issued by the Division of Sanitarian Services of the Department of Health or its authorized agent for the specific construction, alteration, repair, extension, or operation proposed, except that emergency repairs may be undertaken without prior issuance of a permit, provided a permit is subsequently obtained within ten (10) working days after the repairs are made.

(b) It shall be unlawful for any person, firm, corporation, or association to begin construction, alteration, repair, or extension of any individual sewage disposal system or alternate and experimental system, owned by any other person, firm, corporation, association, municipality, or governmental agency until the owner first obtains a valid permit issued by the Division of Sanitarian Services of the Department of Health or its authorized agent.

(c) It shall be unlawful for a septic tank manufacturer to operate a business in the State of Arkansas or to do business in the State of

Arkansas unless he holds a valid registration issued by the Department of Health.

History. Acts 1977, No. 402, § 9; A.S.A. 1947, § 19-5409; Acts 1987, No. 435, § 2.

14-236-113. Applications for permits, etc. — Refusal.

(a) All applications for permits, licenses, or review certificates shall be made on a form which includes such information as may be required by the Division of Sanitarian Services of the Department of Health or its authorized agent to establish compliance with the provisions of this chapter, and any regulations adopted hereunder.

(b) Except as provided in § 14-236-104(a) and (b), a permit for the construction, alteration, repair, extension, or operation of an individual sewage disposal system or alternate and experimental system shall be refused where community sewerage systems are reasonably available or economically feasible, or in instances where the issuance of such permit is in conflict with other applicable laws and regulations, or where the issuance of the permit is in conflict with the public policy declared by this chapter.

History. Acts 1977, No. 402, § 9; A.S.A. 1947, § 19-5409; Acts 1987, No. 435, § 2.

14-236-114. Notification by installer required.

It shall be unlawful for any installer to begin construction, alteration, repair, or extension of any individual sewage disposal system or alternate and experimental system, owned by any other person, firm, corporation, association, municipality, or governmental agency, until the installer first notifies the authorized agent of the date he plans to begin work on the system.

History. Acts 1977, No. 402, § 9; A.S.A. 1947, § 19-5409; Acts 1987, No. 435, § 2.

14-236-115. Registration of installers.

(a) Each installer who operates within the State of Arkansas, regardless of the location of his home office, must become registered by the Division of Sanitarian Services of the Department of Health.

(b) The registration will be issued by the Division of Sanitarian Services of the Department of Health or its authorized agent upon application on proper forms and compliance with the provisions of this chapter and regulations adopted pursuant to this chapter.

(c) The registration shall be renewable on January 1 of each year.

(d) The installer's registration may be revoked without advance notice whenever any provision of this chapter is violated. The installer

may appeal the revocation as provided for in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e) Each installer must furnish proof of current registration upon request by an authorized representative of the Division of Sanitarian Services of the Department of Health.

(f) Failure of an installer to register with the Division of Sanitarian Services of the Department of Health as an installer in the State of Arkansas shall subject the installer to the penalties of subsection (c) of § 14-236-106.

History. Acts 1977, No. 402, § 11; 1983, No. 708, § 5; A.S.A. 1947, § 19-5411.

14-236-116. Permits and registration fees — Annual training course — Transferability — Renewal.

(a) A fee of thirty dollars ($30.00) shall be levied for the review of individual sewage disposal permit applications. However, it shall not be necessary to pay an additional fee to obtain a permit to repair an individual sewage disposal system or alternate and experimental system installed under a permit for which a fee has been paid under the provisions of this chapter.

(b) A fee of fifty dollars ($50.00) shall be levied annually for the registration of installers.

(c) A fee of one hundred dollars ($100) shall be levied annually for the registration of septic tank manufacturers.

(d) A designated representative must attend at least one (1) annual training course provided by the Department of Health and pay a fifty dollar ($50.00) fee annually to maintain certification.

(e) The fee for the issuance of a review certificate under the provisions of this chapter to the person developing a subdivision shall be a minimum of thirty dollars ($30.00) for one (1) lot and five dollars ($5.00) for each following lot, with a maximum of five hundred dollars ($500).

(f) Permit and regulation fees collected under this chapter shall be deposited in the State Treasury as follows:

(1) Five dollars ($5.00) of each permit fee collected for permits issued under subsection (a) of this section shall be credited to a special fund to be known as the "Individual Sewage Disposal Systems Improvement Fund" which is established on the books of the State Treasurer, with such moneys to be used by the Division of Sanitarian Services of the Department of Health, and in the manner recommended by the Advisory Committee on Individual Sewage Disposal Systems, for the implementation of the utilization and application of alternate and experimental individual sewage disposal systems, as set forth in this chapter.

(2) The remainder of the fees collected for permits issued under the provisions of subsection (a) of this section, and all of the net fees collected under the provisions of subsections (b), (c), and (e) of this

section shall be credited to the Public Health Fund, and the moneys shall be used only for the operation of the Division of Sanitarian Services of the Department of Health; and

(3) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health is hereby authorized to transfer all unexpended funds relative to the funds outlined in subdivision (f)(2) of this section that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year; and

(g)(1) Permits issued under subsections (b), (c), and (d) of this section shall be nontransferable and shall be renewed annually.

(2) A late fee equal to one-half (½) of the renewal fee for any type of registration or certification shall be charged to renew a permit sixty (60) days after the annual expiration date.

History. Acts 1977, No. 402, § 9; 1983, No. 708, §§ 3, 4; A.S.A. 1947, § 19-5409; Acts 1987, No. 435, § 2; 1991, No. 873, § 2.

14-236-117. Duty to prosecute.

It shall be the duty of each prosecuting attorney to whom an authorized agent of the State Board of Health reports any violation of this chapter to cause appropriate proceedings to be instituted in the proper courts without delay and to cause the individual who commits the violation to be prosecuted in the manner required by law.

History. Acts 1977, No. 402, § 12; A.S.A. 1947, § 19-5412.

Cross References. Prosecuting attorneys, § 16-21-101 et seq.

14-236-118. Fees for tests, designs, and inspections.

Designated representatives may charge reasonable fees for percolation tests, system designs, and final inspections where the fees are based on generally accepted wage rates for work of the type and on generally accepted charges for equipment and mileage.

History. Acts 1987, No. 435, § 2.

CHAPTER 237

MUNICIPAL WATER AND SEWER DEPARTMENT ACCOUNTING LAW

SECTION.
14-237-101. Title.
14-237-102. Applicability.
14-237-103. Exemption of accounting systems exceeding minimum.
14-237-104. Bank accounts.
14-237-105. Prenumbered receipts or mechanical receipting devices.
14-237-106. Prenumbered checks.
14-237-107. Petty cash funds.
14-237-108. Fixed asset records.
14-237-109. Cash receipts journal.

SECTION.
14-237-110. Cash disbursements journal.
14-237-111. Reconciliation of journals with bank accounts.
14-237-112. Maintenance and destruction of accounting records.
14-237-113. Publication of financial statements.

Cross References. Local Governmental Compliance Act, § 10-4-301 et seq.

Effective Dates. Acts 1977, No. 309, § 2: Feb. 28, 1977. Emergency clause provided: "It is hereby determined that there is a great deal of confusion and uncertainty as to the requirements for publication of financial information by the municipal water and sewer departments of Arkansas; that it is essential that the citizens and qualified voters in the towns and cities have a periodic report of the financial condition of their municipal water and sewer departments. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public health, welfare and safety shall take effect immediately upon its passage and approval."

14-237-101. Title.

This chapter shall be known and cited as "The Arkansas Municipal Water and Sewer Department Accounting Law of 1973."

History. Acts 1973, No. 148, § 1; A.S.A. 1947, § 19-5201.

14-237-102. Applicability.

This chapter shall apply to all municipal water and sewer departments operating in this state under authority granted by state law for the establishment of municipal water and sewer departments.

History. Acts 1973, No. 148, § 2; A.S.A. 1947, § 19-5202.

14-237-103. Exemption of accounting systems exceeding minimum.

(a) In the event any department feels its system of bookkeeping equals or exceeds the basic system prescribed by this chapter, the department may request a review by the Legislative Joint Auditing Committee.

(b) Upon the committee's concurrence with the department's position, the committee may issue a certificate to the department stating that the department's accounting system is of a degree of sophistication which meets the basic requirements of this chapter and exempting the department from the requirements of the particulars of the system prescribed by this chapter.

History. Acts 1973, No. 148, § 11; A.S.A. 1947, § 19-5211.

14-237-104. Bank accounts.

All water and sewer departments of municipalities and incorporated towns of this state shall maintain all funds in depositories approved for that purpose by law. The accounts shall be maintained in the name of the municipal water and sewer department.

History. Acts 1973, No. 148, § 3; A.S.A. 1947, § 19-5203.

14-237-105. Prenumbered receipts or mechanical receipting devices.

(a)(1) All items of income are to be formally receipted by the use of prenumbered receipts or mechanical receipting devices such as cash registers or validating equipment.

(2) However, the use of prenumbered receipts shall not be required for receipting revenues derived from the sale of water to individual consumers where the income is determined by periodic readings of meters and the individual consumer is billed for the water by means of a water bill, part of which must be returned by the consumer with his remittance. In those cases, the water and sewer department shall prepare a detailed monthly statement showing the amount billed to each consumer and posting thereto the amount collected from each consumer on a monthly basis. A summary of the monthly statements shall be submitted to the commission for its review.

(b) In the use of prenumbered receipts, the following minimum standards shall be met:

(1) Receipts are to be prenumbered by the printer and a printer's certificate obtained and retained for audit purposes. The certificate shall state the date printing was done, the numerical sequence of receipts printed, and the name of the printer;

(2) The prenumbered receipts shall contain the following information for each item receipted:

(A) Date;
(B) Amount of receipt;
(C) Name of person or company from whom money was received;
(D) Purpose of payment;
(E) Fund to which receipt is to be credited;
(F) Signature of employee receiving the money;

(3) The original receipt should be given to the party making payment. One (1) duplicate copy of the receipt shall be maintained in numerical order in the receipt book and made available to the auditors during the course of annual audit. Additional copies of the receipt are optional with the water and sewer department and may be used for any purpose it deems fit.

(c) The use of mechanical receipting devices which accomplish the same purpose as prenumbered receipts is acceptable and is encouraged where such equipment is utilized.

History. Acts 1973, No. 148, § 4; A.S.A. 1947, § 19-5204.

14-237-106. Prenumbered checks.

(a) All disbursements of water and sewer department funds, except as noted in § 14-237-107, are to be made by prenumbered checks drawn upon the bank account of that department.

(b) The checks shall be of the form normally provided by commercial banking institutions and shall contain, as a minimum, the following information:

(1) Date of issue;

(2) Check number;

(3) Payee;

(4) Amount, both in numerical and written form;

(5) Signature of authorized disbursing officer of the department.

(c) The water and sewer department shall maintain printer's certificates as to the numerical sequences of checks printed.

History. Acts 1973, No. 148, § 5; A.S.A. 1947, § 19-5205.

14-237-107. Petty cash funds.

(a) Municipal water and sewer departments are permitted to establish petty cash funds, so long as the funds are maintained as set forth in this section. The establishment of a petty cash fund must be approved by the commission.

(b)(1) In establishing a petty cash fund, a check is to be drawn upon the bank account of the water and sewer department payable to "Petty Cash." That amount may be maintained in the water and sewer department offices for the handling of small expenditures for items such as postage, light bulbs, delivery fees, etc.

(2) A paid-out slip is to be prepared for each item of expenditure from that fund and signed by the person receiving the moneys. These paid-out slips shall be maintained with the petty cash.

(3) When the fund becomes depleted, the department may then draw another check payable to "Petty Cash" in an amount which equals the total paid-out slips issued, and at that time the paid-out slips shall be removed from the petty cash fund and utilized as invoice support for the check replenishing petty cash.

History. Acts 1973, No. 148, § 6; A.S.A. 1947, § 19-5206.

14-237-108. Fixed asset records.

(a) All water and sewer departments shall establish and maintain, as a minimum, a listing of all fixed assets and equipment owned by the department. The listing shall contain as a minimum:

(1) Property item number if used by the department;
(2) Brief description;
(3) Serial number, if available;
(4) Location of property;
(5) Vendor purchased from and the date of acquisition;
(6) Cost of property.

(b) In lieu of maintaining a list, the water and sewer department may maintain an index card system for accounting for fixed assets and equipment. The index card system must contain the above information for each unit of property owned by the department.

(c) The fixed asset and equipment records shall constitute a part of the general records of the department and, accordingly, shall be made available for utilization by the auditor at the time of audit.

History. Acts 1973, No. 148, § 7;
A.S.A. 1947, § 19-5207.

14-237-109. Cash receipts journal.

(a) Water and sewer departments shall establish and maintain, as a minimum, a cash receipts journal consisting of columnar paper of at least five (5) columns, which shall be in addition to columns necessary for dates and descriptions.

(b) The receipts journal shall indicate the date of cash received, from whom cash received, and total amount of receipt. As a minimum, columns for the classification of receipts shall include:

(1) Total;
(2) Water Payment;
(3) Sewer Payment;
(4) Sanitation Funds;
(5) Other;
(6) Source of Other.

History. Acts 1973, No. 148, § 8;
A.S.A. 1947, § 19-5208.

14-237-110. Cash disbursements journal.

(a) Water and sewer departments shall maintain, as a minimum, a cash disbursements journal consisting of columnar paper of at least seven (7) columns in addition to the columns necessary for the recording of date, payee, check number, and amount of each check written.

(b) The additional columns are to be used for the classification of expenditures as follows:

(1) Salaries;
(2) Social Security;

(3) Supplies;
(4) Fixed Assets;
(5) Other;
(6) Definition of Other.

History. Acts 1973, No. 148, § 9; A.S.A. 1947, § 19-5209.

14-237-111. Reconciliation of journals with bank accounts.

(a) All water and sewer departments shall, on a monthly basis, reconcile their cash receipts and disbursements journals to the amount on deposit in banks. The reconciliations should take the following form:

Water and Sewer Department of .....

Date .....

Amount Per Bank Statement Dated			$ .00
Add: Deposits in transit (Receipts recorded in Cash Receipts Journal not shown on this bank statement).			
DATE	RECEIPTS NO.	AMOUNT	
		$ .00	
		.00	
		.00	.00
Deduct: Outstanding Checks (Checks issued and dated prior to date of bank statement per Cash Disbursements Journal not having yet cleared the bank).			
CHECK NO.	PAYEE	AMOUNT	
		$ .00	
		.00	
		.00	.00
RECONCILED BALANCE			$ .00

(b) This reconciled balance shall agree with either the cash balance as shown on the department's check stubs running bank balance or the department's general ledger cash balance, whichever system the department employs.

History. Acts 1973, No. 148, § 10; A.S.A. 1947, § 19-5210.

14-237-112. Maintenance and destruction of accounting records.

(a) Accounting records can basically be divided into two (2) groups:

(1)(A) Support Documents. Support documents consist primarily of the following items:

(i) Canceled checks;

(ii) Invoices;

(iii) Bank statements.

(B) These records shall be maintained for a period of at least three (3) years and in no event shall be disposed of prior to being audited for the period in question;

(2) Permanent Records. Permanent records consist of journals, ledgers, subsidiary ledgers, minutes, and fixed assets and equipment detail records, and shall be maintained by the water and sewer department for a period of not less than seven (7) years, after which the permanent records may be destroyed once an audit has been made of the permanent records.

(b) When documents are destroyed, the department shall document the destruction by the following procedure:

(1) An affidavit is to be prepared stating which documents are being destroyed and which period of time is the period to which they apply, indicating the method of destruction. This affidavit is to be signed by the department's employee performing the destruction and one (1) commission member;

(2) In addition, the approval of the commission for destruction of the documents shall be obtained and an appropriate note of the approval indicated in the commission's minutes along with the destruction affidavit. Commission approval shall be obtained prior to the destruction.

History. Acts 1973, No. 148, § 12; 1979, No. 616, § 1, A.S.A. 1947, § 19-5212.

14-237-113. Publication of financial statements.

(a)(1) The operating authority of each municipal water or sewer department shall cause to be published semiannually one (1) time in one (1) legal newspaper of general circulation in the municipality a financial statement of the water or sewer department including the receipts and expenditures for that period and a statement of the indebtedness and financial condition of the water or sewer department.

(2) The financial statement shall be at least as detailed as the minimum record of accounts as provided in this chapter.

(3) The financial statement for the first six (6) months of the calendar year shall be published by September 1, and the financial statement for the last six (6) months of the calendar year shall be published by March 1 of the following year.

(b) However, in incorporated towns where no newspaper is published, written or printed notice posted in five (5) of the most public places in the incorporated town shall be deemed a sufficient publication of the financial statement provided for in this section.

History. Acts 1973, No. 148, § 15 as added by 1977, No. 309, § 1, A.S.A. 1947, §§ 19-5213, 19-5214.

CHAPTER 238

RURAL WATERWORKS FACILITIES BOARDS

SECTION.
14-238-101. Short title.
14-238-102. Legislative intent.
14-238-103. Definitions.
14-238-104. Provisions supplemental.
14-238-105. Construction of chapter.
14-238-106. Creation of boards.
14-238-107. Board names — Powers.
14-238-108. Members — Compensation.
14-238-109. Officers.
14-238-110. Meetings — Quorum — Actions — Records.
14-238-111. Powers — Duties.
14-238-112. Acquisition of property.
14-238-113. Funds.
14-238-114. Issuance of bonds — Procedure.
14-238-115. Bonds for refunding obligations.
14-238-116. Payment of bonds.
14-238-117. Bonds may impose mortgage lien.
14-238-118. Receiver.
14-238-119. Bonds as obligation of issuing board.
14-238-120. Bonds tax exempt.
14-238-121. Property exempt.
14-238-122. Report by boards.
14-238-123. Audits.

14-238-101. Short title.

This chapter may be referred to and cited as the "Rural Waterworks Facilities Boards Act".

History. Acts 1995, No. 617, § 1.

14-238-102. Legislative intent.

It is determined by the General Assembly that adequate rural waterworks and rural water distribution systems are essential to the health, safety, and economic welfare of the people of this state. In order to meet these public needs, it is essential that public financing be provided for the facilities, and it is the purpose of this subchapter to provide an alternative method of financing for those facilities.

History. Acts 1995, No. 617, § 2.

14-238-103. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Acquire" means to obtain by gift, purchase, or other arrangement any project or any portion of a project, whether theretofore constructed and equipped, theretofore partially constructed and equipped, or being constructed and equipped at the time of acquisition,

for such consideration and pursuant to such terms and conditions as the board shall determine;

(2) "Construct" means to acquire or build, in whole or in part, in such manner and by such method, including contracting therefor, and, if the latter, by negotiation or bidding upon such terms and pursuant to such advertising as determined by the board, as will most effectively serve the purposes of this subchapter;

(3) "Equip" means to install or place in or on any building or structure equipment of any and every kind, whether or not affixed, including, without limitation, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture, furnishings, and personal property of every kind;

(4) "Facilities" means real property, personal property, or mixed property of any and every kind, including, without limitation, rights-of-way, utilities, materials, equipment, fixtures, machinery, furniture, furnishings, buildings, and other improvements of every kind;

(5) "Lease" means to lease as lessor or lessee for such rentals, for such periods, and upon such terms and conditions as the board shall agree, including, without limitation, such extension and purchase options for such prices and upon such terms and conditions as the board shall agree;

(6) "Lend" means to extend credit, make a loan to, acquire the obligations of, and generally, without limitation, engage in the financing of any facilities which the board has the authority to construct, acquire, or equip pursuant to this subchapter, upon such terms and with such security as the board deems suitable;

(7) "Ordinance" means an ordinance of a quorum court;

(8) "Rural waterworks facilities board" or "board" means any board organized under this chapter;

(9) "Sell" means to sell for such price, in such manner, and upon such terms as the board shall determine, including, without limitation, public or private sale, and if public, pursuant to such advertisement as the board shall determine, for cash or on credit, payable in a lump sum or in such installments as the board shall determine, and if on credit, with or without interest and at such rate as the board may determine;

(10) "Wastewater facilities" means facilities for the collection, treatment, and disposal of wastewater, but shall not include solid or hazardous waste; and

(11) "Waterworks facilities" means facilities for the furnishing of water for domestic, commercial, agricultural, and industrial purposes, including, without limitation, mains, hydrants, meters, valves, standpipes, storage tanks, pumping tanks, intakes, wells, impounding reservoirs, purification plants, and lakes and watercourses.

History. Acts 1995, No. 617, § 3.

14-238-104. Provisions supplemental.

This chapter shall be liberally construed to effect the purposes of it.

History. Acts 1995, No. 617, § 4.

14-238-105. Construction of chapter.

This chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws.

History. Acts 1995, No. 617, § 5.

14-238-106. Creation of boards.

(a) Any county is authorized to create one (1) or more rural waterworks facilities boards and to empower each board to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in or dispose of, waterworks facilities and wastewater facilities or any interest in such facilities, including, without limitation, leasehold interests in and mortgages on such facilities.

(b) Boards created under this subchapter are not administrative boards under the County Government Code, § 14-14-101 et seq.

(c) Any public facility board created under the Public Facilities Boards Act, § 14-137-101 et seq., or its predecessor, for the purpose of operating a waterworks facility and/or a wastewater facility, and which is in existence on July 28, 1995, may petition the quorum court which created the board to grant the board all the powers conveyed by this chapter, and if the quorum court adopts an ordinance to that effect, the powers and authority granted under this chapter shall be applicable to that public facilities board, and it shall thereafter be governed exclusively by the provisions of this chapter and none other.

History. Acts 1995, No. 617, §§ 6, 23.

14-238-107. Board names — Powers.

(a) Each board shall be created by ordinance of the quorum court. The ordinance shall give the board a name which:

(1) Shall include the name of the creating county;

(2) Shall be descriptive of the powers granted to the board;

(3) Shall be distinctive from the name given to any other board created by the county;

(4) Shall specify the powers granted to the board; and

(5) May place specific limitations on the exercise of the powers granted, including limitations on:

(A) The board's area of operations;

(B) The use of waterworks facilities and wastewater facilities; and

(C) The board's authority to issue bonds.

(b) Unless limited by the creating ordinance, each board created shall be authorized to accomplish waterworks facilities and wastewater facilities projects within, or partly within and partly without, the county.

History. Acts 1995, No. 617, § 7.

14-238-108. Members — Compensation.

(a) Each board shall consist of five (5) members unless there is an expansion of the board to provide services outside the county which created it.

(b)(1) The initial members shall be appointed by the county judge of the creating county for terms of one (1), two (2), three (3), four (4), and five (5) years, respectively.

(2) Successor members shall be elected by a majority of the board for terms of five (5) years each.

(3) Each member shall serve until his successor is elected and qualified.

(4) A member shall be eligible to succeed himself.

(c) Each member shall qualify by taking and filing with the clerk of the county creating the board his oath of office in which he shall swear to support the Constitution of the United States and the Constitution of the State of Arkansas and to discharge faithfully his duties in the manner provided by law.

(d) In the event of a vacancy in the membership of the board, however caused, a majority of the board shall elect a successor member to serve the unexpired term.

(e) The members of the board shall receive no compensation for their services but shall be entitled to reimbursement for reasonable and necessary expenses incurred in the performance of their duties.

(f) Any member of the board may be removed for misfeasance, malfeasance, or willful neglect of duty by the county judge of the county which created the board, after reasonable notice of and an opportunity to be heard concerning the alleged grounds for removal.

(g)(1)(A) If the jurisdiction of a board, pursuant to interlocal agreements, expands to provide services outside the boundaries of the county from which it obtains power, then not more than two (2) additional members per county may be added pursuant to the terms of any relevant interlocal agreement.

(B) These members shall initially be appointed by the county judge of the noncreating county and shall serve for a term agreed upon in the interlocal agreement, provided that the term shall not exceed five (5) years.

(2)(A) The other provisions of this section shall apply to these additional members.

(B) Provided, no additional member shall be eligible to serve as chairman of the board.

History. Acts 1995, No. 617, § 8.

Cross References. Compensation, § 25-16-901 et seq.

14-238-109. Officers.

(a)(1)(A) The members of each board shall meet and organize by electing one (1) of their number as chairman, one (1) as vice chairman, one (1) as secretary, and one (1) as treasurer.

(B) Such officers shall be elected annually thereafter in like manner.

(2) The duties of secretary and treasurer may be performed by the same member.

(b) The board may also appoint an executive director who shall serve at the pleasure of the board and receive such compensation as shall be fixed by the board.

History. Acts 1995, No. 617, § 9.

14-238-110. Meetings — Quorum — Actions — Records.

(a)(1) Each board shall meet upon the call of its chairman, or a majority of its members, and at such times as may be specified in its bylaws for regular meetings.

(2) A majority of its members shall constitute a quorum for the transaction of business.

(3) No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(b)(1) The affirmative vote of a majority of the members present at a meeting of the board shall be necessary for any action taken by the board.

(2) Any action taken by the board shall be by resolution, and such resolution shall take effect immediately unless a later effective date is specified in the resolution.

(c)(1) The secretary of the board shall keep a record of the proceedings of the board and shall be custodian of all books, documents, and papers filed with the board and of the minute book or journal of the board and of its official seal.

(2) The secretary may cause copies to be made of all minutes and other records and documents of the board. He may give certificates under the official seal of the board to the effect that the copies are true copies, and all persons dealing with the board may rely upon the certificates.

(3) Records and documents of the boards shall be preserved and maintained at such locations and in such manner as prescribed by ordinance of the county which created the boards.

History. Acts 1995, No. 617, § 10.

14-238-111. Powers — Duties.

(a) Each board is authorized and empowered:

(1) To have perpetual succession as a body politic and corporate and to adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) To adopt an official seal and alter it at pleasure;

(3) To maintain an office at such place in the county creating the board as it may designate;

(4) To sue and be sued in its own name;

(5) To accomplish waterworks facilities and wastewater facilities projects as authorized by this subchapter and the ordinance creating the board;

(6) To lend money, directly or indirectly, for the financing of the construction, acquisition, and equipment of all or a portion of a waterworks facility and/or wastewater facility project;

(7) To invest money, including a major portion of the proceeds of any issue of bonds for the term of the bonds or a shorter period, in consideration of a contract to make payment or payments to provide for the payment of the principal, premium, if any, and interest on the bonds when due;

(8) To fix, charge, and collect rents, fees, and charges for the use of any waterworks facilities;

(9) To employ and pay compensation to such employees and agents, including attorneys, consulting engineers, architects, surveyors, accountants, financial experts, and such other employees and agents as may be necessary in its judgment, and to fix their compensation;

(10) To do any and all other acts and things in this chapter authorized or required to be done, whether or not included in the powers mentioned in this section; and

(11) To do any and all other things necessary or convenient to accomplish the purposes of this subchapter.

(b) Any board established under this chapter may, in its discretion, invest any of its funds not immediately needed for its purposes in bonds issued under the provisions of this chapter.

History. Acts 1995, No. 617, §§ 11, 17.

14-238-112. Acquisition of property.

(a) Any county may acquire facilities for a waterworks facility and/or wastewater facility project, or any portion thereof, including a project site, by gift, purchase, lease, or condemnation, and may transfer any such facilities to a board created by the county by sale, lease, or gift.

(b) Transfer may be authorized by ordinance of the quorum court without regard to the requirements, restrictions, limitations, or other provisions contained in any other law.

(c) Boards may exercise the power of eminent domain in accordance with the procedures prescribed by § 18-15-201 et seq.

History. Acts 1995, No. 617, § 12.

14-238-113. Funds.

(a) Boards are authorized to use any available funds and revenues for the accomplishment of all or a portion of waterworks facilities and/or wastewater facilities projects and may issue bonds, as authorized by this subchapter, for the accomplishment of all or a portion of waterworks facilities and/or wastewater facilities projects, either alone or together with other available funds and revenues.

(b) Bonds may be issued in principal amounts as shall be sufficient to pay the costs of issuing bonds, the amount necessary for a reserve, if deemed desirable, the amount necessary to provide for debt service until revenues for the payment thereof are available, the amount necessary to acquire a contract providing for payments to the board at a rate or rates at least sufficient to provide for, alone or with any other revenues that may be pledged, debt service on the bonds, if deemed desirable, and to pay any other costs and expenditures of whatever nature incidental to the accomplishment of all or a portion of the waterworks facilities or wastewater facilities project involved and the placing of it into operation.

History. Acts 1995, No. 617, § 14.

14-238-114. Issuance of bonds — Procedure.

(a)(1) The issuance of bonds shall be by resolution of the board.

(2) As the resolution authorizing their issuance may provide, the bonds may:

(A) Be in such form and denominations;

(B) Be exchangeable for bonds of another denomination;

(C) Be issued in one (1) or more series;

(D) Bear such date or dates, and mature at such time or times, not exceeding forty (40) years from the respective dates;

(E) Bear interest at such rate or rates;

(F) Be coupon bonds payable to bearer but subject to registration as to principal or as to principal and interest;

(G) Be made payable at such places within or without the state;

(H) Be payable in such medium of payment;

(I) Be subject to such terms of redemption; and

(J) Contain such terms, covenants, and conditions, including, without limitation, those pertaining to:

(i) The custody and application of the proceeds of the bonds;

(ii) The collection and disposition of revenues;

(iii) The maintenance of various funds and reserves;

(iv) The nature and extent of the security and pledging of revenues;

(v) The rights, duties, and obligations of the board and the trustee for the holders and registered owners of the bonds; and

(vi) The rights of the holders and registered owners of the bonds.

(3)(A) There may be successive bond issues for the purpose of financing the same waterworks facilities and/or wastewater facilities project, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping waterworks facilities and/or wastewater facilities projects already in existence, whether or not originally financed by bonds issued under this subchapter, with each successive issue to be authorized as provided by this subchapter.

(B) Priority between and among issues and successive issues as to security of the pledge of revenues and lien on the waterworks facilities and/or wastewater facilities project involved may be controlled by the resolution authorizing the issuance of the bonds.

(4) Subject to the provisions of this section pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas.

(5) Without limiting the generality of the foregoing, the resolution may provide for the investment of a major portion of the proceeds of the bonds in consideration of a contract to make payment or payments at least sufficient, alone or with other revenues pledged, to provide for principal, premium, if any, and interest on the bonds, as due.

(b)(1) The resolution authorizing the bonds may provide for the execution by the board of an indenture which defines the rights of the holders and registered owners of the bonds and provides for the appointment of a trustee for the holders and registered owners of the bonds.

(2) The indenture may control the priority between and among successive issues and may contain any other terms, covenants, and conditions that are deemed desirable, including, without limitation, those pertaining to:

(A) The custody and application of proceeds of the bonds;

(B) The collection and disposition of revenues;

(C) The maintaining of rates and charges;

(D) The maintenance of various funds and reserves;

(E) The nature and extent of the security and pledging of revenues;

(F) The rights, duties, and obligations of the board and the trustee; and

(G) The rights of the holders and registered owners of the bonds.

(c) The bonds may be sold at public or private sale for such price, including, without limitation, sale at a discount, and in such manner as the board may determine by resolution.

(d)(1) The bonds shall be executed by the manual or facsimile signature of the chairman and by the manual or facsimile signature of the secretary of the board.

(2) The coupons attached to the bonds may be executed by the facsimile signature of the chairman of the board.

(3) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes.

History. Acts 1995, No. 617, § 15.

14-238-115. Bonds for refunding obligations.

(a) Bonds may be issued for the purpose of refunding any obligations issued under this chapter. Such refunding bonds may be combined with bonds issued under the provisions of § 14-238-114 into a single issue.

(b) When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations. If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement thereof, either at maturity or upon any authorized redemption date.

(c)(1) All bonds issued under this section shall in all respects be authorized, issued, and secured in the manner provided for other bonds issued under this chapter and shall have all the attributes of such bonds.

(2) The resolution under which the refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby.

History. Acts 1995, No. 617, § 16.

14-238-116. Payment of bonds.

(a) The principal of and interest on the bonds shall be payable from:

(1) Revenues derived from the waterworks facilities and/or wastewater facilities projects acquired, constructed, reconstructed, equipped, extended, or improved, in whole or in part, with the proceeds of the bonds;

(2) Obligations of:

(A) The owners of waterworks facilities and/or wastewater facilities projects; or

(B) Any person with whom the proceeds of the bonds, or a portion thereof, are invested by contract or otherwise;

(3) Any other funds or sources of funds of the board specifically pledged and which are set aside as a special fund or source, other than taxes or assessments for local improvements, for the purpose of paying the principal of and interest on the bonds; or

(4) Any combination of subdivisions (a)(1)-(3) of this section.

(b) The board is authorized to pledge those revenues, obligations, and other special funds or sources to pay the principal of and interest on the bonds.

History. Acts 1995, No. 617, § 19

14-238-117. Bonds may impose mortgage lien.

(a) The resolution or indenture referred to in § 14-238-114 may, or may not, impose a foreclosable mortgage lien upon or security interest in all or any portion of the lands, buildings, or facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of bonds issued under this chapter, and the nature and extent of the mortgage lien or security interest may be controlled by the resolution or indenture, including, without limitation, provisions pertaining to the release of all or part of the lands, buildings, or facilities from the mortgage lien or security interest and the priority of the mortgage lien or security interest in the event of successive bond issues as authorized by § 14-238-114.

(b) Subject to such terms, conditions, and restrictions as may be contained in the resolution or indenture authorizing or securing the bonds, any holder or registered owner of bonds issued under the provisions of this chapter, or a trustee, on behalf of all holders and registered owners, may, either at law or in equity, enforce the mortgage lien or security interest and may, by proper suit, compel the performance of the duties of the members and employees of the issuing board as set forth in this chapter, the ordinance creating the board, and the resolution or indenture authorizing or securing the bonds.

History. Acts 1995, No. 617, § 20.

14-238-118. Receiver.

(a)(1) In the event of a default in the payment of the principal of or interest on any bonds issued under the provisions of this chapter, any court having jurisdiction may appoint a receiver to take charge of the waterworks facilities and/or wastewater facilities projects upon or in which there is a mortgage lien or security interest securing the bonds in default.

(2) The receiver shall have the power and authority to:

(A) Operate and maintain the waterworks facilities project in receivership;

(B) Charge and collect payments, fees, rents, and charges sufficient to provide for the payment of any costs of receivership and operating expenses of the project in receivership; and

(C) Apply the revenues derived from the project in receivership in conformity with this chapter and the resolution or trust indenture securing the bonds in default.

(3) When the default has been cured, the receivership shall be ended and the project returned to the board.

(b) The relief provided for in this section shall be construed to be in addition and supplemental to the other remedies provided for in this chapter and the remedies that may be provided for in the resolution or trust indenture authorizing or securing the bonds, and shall be so granted and administered as to accord full recognition to priority rights of bondholders as to the pledge of revenues from and mortgage lien on

or security interest in projects as specified in and fixed by the resolution or trust indenture authorizing or securing successive issues of bonds.

History. Acts 1995, No. 617, § 21.

14-238-119. Bonds as obligation of issuing board.

(a) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this chapter, that the bonds are obligations only of the board, and that in no event shall they constitute an indebtedness for which the faith and credit of the creating county or any of its revenues are pledged.

(b) No member of the board shall be personally liable on the bonds or for any damages sustained by anyone in connection with any contracts entered into in carrying out the purpose and intent of this chapter unless he shall have acted with a corrupt intent.

History. Acts 1995, No. 617, § 19.

14-238-120. Bonds tax exempt.

Bonds issued under this chapter and the income therefrom shall be exempt from all state, county, and municipal taxes. This exemption includes income and estate taxes.

History. Acts 1995, No. 617, § 18.

14-238-121. Property exempt.

(a) It is declared that each board created pursuant to this subchapter will be performing public functions and will be a public instrumentality of the county creating the board. Accordingly, all properties at any time owned by the board and the income therefrom shall be exempt from all taxation in the State of Arkansas.

(b) Bonds issued under the provisions of this chapter shall be eligible to secure the deposit of public funds.

History. Acts 1995, No. 617, §§ 13, 17.

14-238-122. Report by boards.

(a) Within the first ninety (90) days of each calendar year, each board shall make a written report to the quorum court of the county which created the board concerning its activities for the preceding calendar year.

(b) Each report shall set forth a complete operating and financial statement covering its operation during the year.

History. Acts 1995, No. 617, § 22.

14-238-123. Audits.

(a) Each board shall annually contract with a certified public accountant to perform an audit of the board's revenues which are not pledged to outstanding bonded indebtedness.

(b) The board shall furnish a copy of the audit report to the quorum court of the county which created the board, and the board shall make the audit report available to the public for inspection under the Freedom of Information Act, § 25-19-101 et seq.

History. Acts 1995, No. 617, § 14.

CHAPTERS 239-247

[Reserved]

SUBTITLE 15. SOLID WASTE DISPOSAL, WATERWORKS, AND SEWER IMPROVEMENT DISTRICTS

CHAPTER 248

GENERAL PROVISIONS

[Reserved]

CHAPTER 249

SUBURBAN SEWER DISTRICTS

SECTION.
14-249-101. Applicability.
14-249-102. Formation authorized.
14-249-103. Procedure for tapping service.
14-249-104. Employment of inspector.
14-249-105. Settlement and report of inspector.
14-249-106. Disposition of fees.

Cross References. Tort liability immunity, § 21-9-301 et seq.

Preambles. Acts 1941, No. 51 contained a preamble which read: "Whereas, there are sewer districts in built-up areas outside the corporate limits of cities or towns of the first or second class and there are now no regulations governing the tapping of the sewer lines for making connections, and

"Whereas, in a great majority of instances, the connections are made by individuals and plumbers, which are a great injury to the sewer system and the future operation thereof. Frequently these connections are made by breaking a hole in the sewer main and butting the connection pipe up against the hole and failing to properly cement around it so as to prevent water, dirt, and gravel from getting in the sewers, and the water that comes in at such holes during the rainy seasons of the year, overloads the sewer to such an extent it cannot give good service and the dirt and gravel which goes into the mains of these sewers collects in the low places of the sewers and finally stops up same. Frequently this stoppage is at points where the sewer mains are at great depths in the ground, thereby causing great expense to the sewer district to remove the dirt and gravel.

"In other instances, the connections are made by knocking a hole in the sewer

main and allowing the connection pipe to protrude an inch or two into the sewer main, and this protruding pipe in the sewer main almost invariably, in time, stops up the sewer and causes a great deal of trouble, and expense to the sewer district for remedying the trouble.

"Consequently, it is to the interest of the property holders of the sewer district and to the successful operation of the sewer district that the commissioners of such sewer district have authority to regulate all sewer connections by permitting no sewer connections to be made without a permit, and have an inspector to see that all connections are property made;

"Now, therefore. ."

Effective Dates. Acts 1941, No. 51, § 7· approved Feb. 13, 1941. Emergency clause provided: "As all sewer improvement districts, which will be affected by this act, are organized for the purpose of making improvements for the health and safety of the people residing in such districts, it is ascertained and hereby declared that unless such districts are authorized to prevent damage to the sewer lines built by the districts by improper connections, the sewer lines will not be able to properly function as was intended and the public health and safety will suffer. It is, therefore, hereby declared that an emergency exists and that for the preservation of the public peace, health, and safety, this act shall take effect immediately upon its passage."

14-249-101. Applicability.

Sections 14-249-103 — 14-249-106 are primarily intended to regulate connections to sewer systems operating where there are now no regulations as to sewer connections and they shall not apply to connections made to sewer lines located in cities or towns of the first or second class.

History. Acts 1941, No. 51, § 6; A.S.A. 1947, § 20-807.

14-249-102. Formation authorized.

The property owners adjacent to any city of the first or second class are authorized to form a sanitary sewer district in the same manner and under the same provisions as drainage districts are now formed.

History. Acts 1939, No. 405, § 1; A.S.A. 1947, § 20-801.

Cross References. Organization of drainage districts, § 14-2-101 et seq.

14-249-103. Procedure for tapping service.

(a) The commissioners of any suburban sewer district, which has built sanitary sewer lines outside the corporate limits of towns and cities of the first and second class, are given the right to establish rules and regulations for tapping the sewer mains built by the district, and the commissioners may require that all parties desiring to tap the sewer main shall obtain a permit before making any excavation to make the tap or sewer connection, and the commissioners shall have the right to charge for the connection permit whatever sum they deem equitable not in excess of six dollars ($6.00) for each connection or tap.

(b) The commissioners shall provide a form of permit for all connections, which shall be issued in triplicate, one (1) going to the party who

secured the permit, one (1) to be filed with the secretary of the commission, and one (1) to be retained by the inspector or party issuing the permit.

(c) Any party who makes an excavation for a connection or a connection to the lines of a sanitary sewer district coming under the provisions of §§ 14-249-101 and 14-249-103 — 14-249-106 and who fails to obtain a permit shall be required to pay to the district double the regular connection charge and shall be required to remove the earth so that the inspector can see the connection made. Furthermore, the person shall be subject to prosecution and to a fine of not less than ten dollars ($10.00) for the first offense and one hundred dollars ($100) for the second offense.

History. Acts 1941, No. 51, §§ 1, 4; A.S.A. 1947, §§ 20-802, 20-805.

Cross References. Sewer connections to land outside district, § 14-91-901 et seq.

14-249-104. Employment of inspector.

(a) The board of commissioners of any sewer district may employ an inspector and fix the inspector's compensation, which shall be a portion of each connection fee collected.

(b) The inspector shall make an inspection after the party making the connection has excavated down to the sewer main but before the sewer main is tapped, and then the inspector shall make a second inspection after the tap or connection is made to the sewer main but before the section of the sewer main, which is tapped, is backfilled with earth, so that the inspector can see that the connection is properly made and well cemented in place.

(c) Where two (2) or more sewer districts embrace an area that is adjacent to or overlapped by the various sewer districts, the boards of the several sewer districts may jointly employ an inspector who shall look after connections on the lines of the different sewer systems by which he is employed, in which case, the permit issued shall show not only the location of the connection to be made, for which the permit was issued, but on the lines of what sewer district the connection is to be made.

History. Acts 1941, No. 51, §§ 2, 3; A.S.A. 1947, §§ 20-803, 20-804.

14-249-105. Settlement and report of inspector.

(a) The inspector shall make a settlement, quarterly, with the board of commissioners or with each board of commissioners if he is in the employ of more than one (1) sewer district. Annually the inspector shall make a report to each district, showing each connection made and the fee collected therefor.

(b) This report shall be in triplicate, one (1) copy to be retained by the inspector, one (1) copy to be filed with the secretary of the district, and one (1) copy to be filed with the clerk of the county court.

History. Acts 1941, No. 51, § 4; A.S.A. 1947, § 20-805.

14-249-106. Disposition of fees.

All funds received by the district from connection fees over and above the amount paid the inspector shall be kept in a bank in a separate maintenance account of the sewer district and shall be used in maintaining the sewer system.

History. Acts 1941, No. 51, § 5; A.S.A. 1947, § 20-806.

CHAPTER 250

WASTEWATER TREATMENT DISTRICTS

SECTION.
14-250-101. Title.
14-250-102. Definitions.
14-250-103. Provisions controlling.
14-250-104. Exemption from jurisdiction of Arkansas Public Service Commission.
14-250-105. Construction.
14-250-106. Petition to establish.
14-250-107. Review of petition.
14-250-108. Hearing on petition — Appeal.
14-250-109. Board of directors — Appointment.
14-250-110. Board of directors — Proceedings.
14-250-111. Powers.
14-250-112. Expansion of service area.
14-250-113. Nonprofit operation.
14-250-114. Tax and assessment exemption.
14-250-115. Service or rate grievance — Right to petition.

14-250-101. Title.

This chapter may be referred to and cited as the "Wastewater Treatment Districts Act."

History. Acts 1983, No. 608, § 1; A.S.A. 1947, § 20-2301.

14-250-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "District" or "wastewater district" means a nonprofit regional wastewater treatment district organized under the authority of this chapter;

(2) "Board" or "board of directors" means the board of a wastewater district organized under the authority of this chapter;

(3) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state agency, state or political subdivision thereof, municipality, or any body politic;

(4) "Acquire" means and includes construct or acquire by purchase, lease, devise, gift, or other mode of acquisition;

(5) "Obligation" includes bonds, notes, debentures, interim certificates or receipts, and all other evidences of indebtedness issued by a regional wastewater district formed under this chapter;

(6) "Department" means the Pollution Control and Ecology Department of the State of Arkansas.

History. Acts 1983, No. 608, § 2; A.S.A. 1947, § 20-2302.

14-250-103. Provisions controlling.

(a) This chapter is complete in itself and shall be controlling.

(b) The provision of any other law of this state, except as provided in this chapter, shall not apply to a wastewater district organized under this chapter.

History. Acts 1983, No. 608, § 15; A.S.A. 1947, § 20-2314.

14-250-104. Exemption from jurisdiction of Arkansas Public Service Commission.

Districts organized under this chapter shall be exempt in any and all respects from the jurisdiction and control of the Public Service Commission of this state.

History. Acts 1983, No. 608, § 10; A.S.A. 1947, § 20-2310.

14-250-105. Construction.

(a) This chapter shall be construed liberally.

(b) The enumerating of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

History. Acts 1983, No. 608, § 13; A.S.A. 1947, § 20-2313.

14-250-106. Petition to establish.

(a) When resolutions proposing creation of a regional wastewater collection and treatment district are passed by the councils or other governing bodies of two (2) or more municipalities, a petition to establish a regional wastewater collection and treatment district may be submitted to the circuit court of a county which contains a significant portion of the proposed district.

(b) The petition shall contain a duly executed resolution from each entity authorizing each entity to be included in the district, provided that, in any unincorporated area, fifty-one percent (51%) of property

owners by number shall approve by petition prior to being included in the district. The petition shall also contain:

(1) An accurate description and a map of the area to be served initially;

(2) A brief statement showing the need for formation of the district and describing the benefits to be received by residents or property owners in the area;

(3) The proposed name of the district;

(4) The proposed location of the principal office of the district.

History. Acts 1983, No. 608, § 3; A.S.A. 1947, § 20-2303.

14-250-107. Review of petition.

(a) Upon the filing of the petition in the office of the circuit court for the county, or any one of the counties, where the district is to be located, in whole or in part, the clerk shall prepare a certified copy of the petition and transmit the copy to the department within five (5) days from the date of the filing of the petition.

(1) Upon receipt of the certified copy, the department shall institute an investigation of the proposed district, its territory, and purposes and, within thirty (30) days after receipt of the copy, shall transmit a written report of its findings on the petition to the clerk of the circuit court.

(2) The report shall include any pertinent information related to the advisability or inadvisability of establishment of the proposed district.

(b) Within thirty (30) days after the report of the department has been filed in the office of the circuit clerk, the petition shall be presented to the judge of the circuit court of the county, either in term or vacation, and the court shall thereupon enter its order setting a hearing upon the petition and directing the clerk of the court to give notice of the hearing by publication for two (2) consecutive weeks in a newspaper or newspapers having a general circulation in each of the entities comprising the proposed district. The notice shall contain:

(1) A brief and concise statement describing the purpose of the hearing;

(2) A description of the territory to be embraced within the district;

(3) A brief and concise statement of the action of the department;

(4) A warning to all persons residing or owning property within the boundaries of the proposed district to appear upon the date and at the time and place of the hearing to show cause, if there is any, why the petition should not be granted.

History. Acts 1983, No. 608, § 4; A.S.A. 1947, § 20-2304.

14-250-108. Hearing on petition — Appeal.

(a) Upon the date and at the time and place named in the notice, the circuit court shall meet, and shall hear all persons who wish to appear and advocate or resist the establishment of the district and, if the court, after being satisfied as to the sufficiency of the petition and the proceedings thereon, finds and deems it is in the best interests of the persons residing or owning property within the boundaries of the proposed district that the district be established under the terms of this chapter, then the court shall enter its order establishing a district embracing the territory described in the petition, subject to all the terms and provisions in this chapter, and designating a name for the wastewater district. The order establishing the wastewater district shall have all the force and effect of a judgment.

(b) Any person aggrieved by the entry of the order by the court may appeal, as in other cases of appeal to the Supreme Court, from the order within thirty (30) days after the order has been made, but, if no appeal is taken within that time, the order authorizing and creating the district shall be deemed conclusive and any person residing in the district may, in like manner and time appeal from any order refusing to establish the district.

History. Acts 1983, No. 608, § 5; A.S.A. 1947, § 20-2305.

14-250-109. Board of directors — Appointment.

(a) All powers granted a district created under this chapter shall be executed by a board of directors. The board shall equal a total of nine (9) directors, which members shall be ascertained by the circuit court according to the population of each entity which is enumerated in the formation order creating the district.

(b) When the circuit court has established any such district, it shall, within a reasonable time thereafter, appoint one (1) director from each of the entities to act as director of said district, and the remaining number of directors as previously ascertained by the court shall be appointed by the city council of the entity within which they are domiciled.

(c) Each of the directors, and all directors appointed thereafter, shall take the oath of office required by Arkansas Constitution, Article 19, § 20, and shall also swear that he will not, directly or indirectly, be interested in any contract made by the board.

(1) Any commissioner failing to take the oath within thirty (30) days after his appointment or election shall be removed from office, and his place shall be filled as are other vacancies.

(2) All oaths of directors shall be executed in writing and filed in the office of the circuit clerk in the county where the petition was originally filed.

(d) Each director shall serve a term as set forth in the district's bylaws, but not to exceed four (4) years. Initial appointments shall be of

varying lengths so that no more than one (1) director for each entity shall be replaced at any one time.

(e) Three (3) directors shall be appointed by the governing body of each participating entity which they are to represent.

(f) The petition shall be filed with the county board of election commissioners at least sixty (60) days prior to the general election.

(g) Any director who resigns or vacates his office for any reason other than expiration of his term shall be replaced by the entity he represented.

History. Acts 1983, No. 608, § 6; A.S.A. 1947, § 20-2306; Acts 1993, No. 157, § 1.

Amendments. The 1993 amendment substituted "The board shall equal a total of nine (9) directors, which members shall be ascertained by the circuit court according to the population of" for "which shall be composed of three (3) representatives from" in (a); and, in (b), substituted "any such" for "a," substituted "one (1) director" for "the three (3) directors," substituted "director" for "directors," and substituted "the remaining number of directors as previously ascertained by the court" for "upon the expiration of the terms of the respective appointed directors, subsequent directors."

14-250-110. Board of directors — Proceedings.

(a) Immediately upon the appointment of the board of directors, the directors shall meet and organize and shall elect a president, vice president, and secretary-treasurer from their membership and shall adopt bylaws which shall govern their proceedings.

(b)(1) Regular meetings of the board of directors shall be held quarterly in the office of the district on a day to be selected by the board.

(2) Notice of the meetings shall be mailed to each director at least five (5) days prior to the date thereof. Special meetings may be held at any time, upon waiver of notice of the meetings by all directors, or may be called by the president or by any two (2) directors at any time, provided that notice in writing, signed by the persons calling any special meeting, shall be mailed to each director at least five (5) days prior to the time fixed for the special meeting.

(c) A majority of the directors shall constitute a quorum for the transaction of business, and, in the absence of any of the elected officers of the district, a quorum at any meeting may select a director to act as the officer pro tempore.

(d) Each meeting of the board, whether regular or special, shall be open to the public, and the board shall at no time go into executive session. All regular board meetings shall be advertised by at least one (1) insertion in a newspaper serving the district. The insertion shall be at least two (2) days prior to the meeting.

(e) The directors provided for in this chapter may receive as compensation the sum of twenty dollars ($20.00) each day for attending meetings of the board, provided that not more than forty dollars ($40.00) shall be paid to any director for meetings held in any one (1) calendar month, together with the director's reasonable and necessary expenses.

(f) The board shall have the right, power, and authority to employ such attorneys, agents, and personnel as it may deem necessary, and to fix their respective compensation.

History. Acts 1983, No. 608, § 6; A.S.A. 1947, § 20-2306.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

14-250-111. Powers.

Each wastewater district shall have power:

(1) To sue and be sued, and complain and defend, in its corporate name;

(2) To adopt a seal, which may be altered at pleasure, and to use it, or a facsimile thereof, as required by law;

(3) To construct, erect, lease as lessee, purchase, and in any manner acquire, hold, own, maintain, operate, sell, dispose of, lease as lessor, exchange, and mortgage plants, buildings, works, machinery, supplies, equipment, facilities, property rights, and transportation and collection lines useful, necessary, or convenient to the purpose of the district as set forth in this chapter;

(4) To acquire, own, hold, use, exercise, and, to the extent permitted by law, sell, mortgage, pledge, hypothecate, and in any manner dispose of franchises, rights, privileges, licenses, rights-of-way, and easements necessary, useful, or appropriate;

(5) To purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, sell, exchange, and use any and all real and personal property, or any interest therein;

(6) To borrow money and otherwise contract indebtedness, to issue its obligations therefor, and to secure the payment thereof by mortgage, pledge, or deed of trust of all or any of its property, assets, franchises, rights, privileges, licenses, rights-of-way, easements, revenues, or income. Any and all securities and evidences of indebtedness issued by a wastewater district formed pursuant to this chapter and the income, interest, and capital gains thereon shall be subject to the income tax and inheritance tax laws of this state, and persons owning or holding securities and evidences of indebtedness or their heirs, devisees, successors, or assigns shall not be required to pay to the State of Arkansas inheritance tax upon the securities or evidences of indebtedness and shall not be required to pay to the State of Arkansas income tax upon the profits and capital gains upon the securities and evidences of indebtedness;

(7) To sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property, assets, franchises, rights, privileges, licenses, rights-of-way, and easements;

(8) In connection with the acquisition, construction, improvement, operation, or maintenance of its transportation and collection lines, systems, equipment, facilities, or apparatus, to acquire any highway or any right-of-way, easement, or other similar property rights, or any tax-forfeited land owned or held by the State of Arkansas or any political subdivision thereof;

(9) To have and exercise the right of eminent domain for the purpose of acquiring rights-of-way and other properties necessary in the construction or operation of its property and business in the manner now provided by the condemnation laws of this state for acquiring private property for public use;

(10) To accept gifts or grants of money, services, franchises, rights, privileges, licenses, rights-of-way, easements, or other real or personal property;

(11) To make any and all contracts necessary or convenient for the exercise of the powers granted in this chapter;

(12) To fix, regulate, and collect rates, fees, rents, or other charges for wastewater collection and disposal and any other facilities, supplies, equipment, or services furnished by the wastewater district. The rates shall be just, reasonable, and nondiscriminatory;

(13) To conduct its affairs within and without this state;

(14) To elect, appoint, or employ officers, agents, and employees of the district and to define their duties and fix their compensation;

(15) To do and perform all acts and things and to have and exercise any and all powers necessary, convenient, or appropriate to effectuate the purpose for which the district is organized.

History. Acts 1983, No. 608, § 7; A.S.A. 1947, § 20-2307.

14-250-112. Expansion of service area.

Service may be extended to any person upon majority vote of the board if the extension will not cause injury to any person already served and if the costs for the service are calculated and billed in an equitable manner.

History. Acts 1983, No. 608, § 12; A.S.A. 1947, § 20-2312.

14-250-113. Nonprofit operation.

(a) Wastewater districts formed pursuant to this chapter shall be operated without profit, but the rates, fees, rent, or other charges for wastewater disposal and other facilities, supplies, equipment, or services furnished by the wastewater district shall be sufficient at all times:

(1) To pay all operating and maintenance expenses necessary or desirable for the prudent conduct of its affairs and the principal of and

interest on the obligations issued or assumed by the district in the performance of the purposes for which it was organized;

(2) For the creation of adequate reserves.

(b) The revenues of the wastewater district shall be devoted first to the payment of operating and maintenance expenses and the principal and interest on outstanding obligations and, thereafter, to such reserves for improvements, new construction, depreciation, and contingencies as the board may prescribe from time to time.

(c) Revenues not required for the purposes set forth in subsection (b) of this section shall be returned from time to time to the customers of the wastewater district on a pro rata basis, according to the amount of business done with each customer during the period for which the return is made, either in cash, in abatement of current charges for wastewater disposal, or otherwise as the board determines. The return may be made by way of a general rate reduction to customers if the board so elects.

History. Acts 1983, No. 608, § 11;
A.S.A. 1947, § 20-2311.

14-250-114. Tax and assessment exemption.

Districts formed pursuant to this chapter shall be exempt from all excise taxes of whatsoever kind or nature and, further, shall be exempt from payment of assessments in any general or special taxing district levied upon the property of the water district, whether real, personal, or mixed.

History. Acts 1983, No. 608, § 9;
A.S.A. 1947, § 20-2309.

14-250-115. Service or rate grievance — Right to petition.

(a) Any person aggrieved by the service furnished or rates charged by a district shall have, as a matter of right, the right to petition the grievance from the decision or action of the district to the circuit court of the county in which the district was formed.

(b) Upon the petition being filed, the circuit court shall hear the petition de novo and is empowered to make such orders as may be necessary and proper in equity.

History. Acts 1983, No. 608, § 8;
A.S.A. 1947, § 20-2308.

CHAPTER 251

WATER IMPROVEMENT DISTRICTS

SECTION.
14-251-101. Definition.
14-251-102. Applicability.
14-251-103. Penalty.
14-251-104. Summons and prosecution for offense.
14-251-105. Injunction.

SECTION.
14-251-106. Recreational activities on lands and waters authorized — Exceptions.
14-251-107. Lease of property for recreational purposes.
14-251-108. Designation of warden.
14-251-109. Nonliability of employees.
14-251-110. Disposition of fees, rentals, etc.

Effective Dates. Acts 1959, No. 204, § 13: approved Mar. 25, 1959. Emergency clause provided: "It is found to be a fact that the water supplies of many municipalities are being endangered by improper protection of the lakes, reservoirs and streams from which their water supply is taken; that recreational activity upon the lands and waters held for waterworks purposes will be of great benefit to the public health and welfare if adequate controls are provided; and an emergency is hereby created and is declared and this Act, being necessary for the immediate preservation of the public peace, health, safety and welfare, shall be in force from and after its passage."

RESEARCH REFERENCES

Am. Jur. 78 Am. Jur. 2d, Waters, § 119.

14-251-101. Definition.

The term "operating authority", as used in this chapter unless the context otherwise requires, is defined to mean either the legislative body or the board of commissioners, whichever is charged in a given instance with the responsibility of operating the municipal waterworks system.

History. Acts 1959, No. 204, § 2; A.S.A. 1947, § 19-4231.

14-251-102. Applicability.

The provisions of this chapter, with the exception of §§ 14-251-104 and 14-251-108, shall apply to all water improvement districts.

History. Acts 1959, No. 204, § 2; A.S.A. 1947, § 19-4231.

14-251-103. Penalty.

The violation of this chapter or of any rule or regulation adopted by the operating authority shall constitute a misdemeanor, and upon conviction the offender shall be fined not less than fifty dollars ($50.00) nor more than two hundred dollars ($200) for each offense.

History. Acts 1959, No. 204, § 8; A.S.A. 1947, § 19-4238.

14-251-104. Summons and prosecution for offense.

(a) Wardens may issue a special summons returnable to the municipal court of the municipality owning the waterworks system. The summons shall specify the date of the offense and the law or the number of the rule or regulation violated.

(b) The original of the summons shall be retained by the warden. A copy shall be delivered to the offender and two (2) copies delivered to the clerk of the municipal court within ten (10) days after issuance of the summons.

(c) The clerk of the court shall insert the date of hearing on one (1) copy of the summons and the copy shall be served on the offender by regular mail or may be served in person by the warden or by any other person authorized by law to serve process.

(d) It shall be the duty of the prosecuting attorney of the county where the municipality is located to prosecute offenders.

History. Acts 1959, No. 204, § 7; A.S.A. 1947, § 19-4237.

14-251-105. Injunction.

(a) Anything to the contrary in this chapter notwithstanding, the State Board of Health may obtain an injunction restraining the operating authority from permitting a recreational activity if the rules and regulations adopted by the operating authority or if the provisions of any lease granted by the operating authority, do not adequately protect the water supply from pollution, or if the rules and regulations or the terms of any lease are not properly enforced by the operating authority.

(b) Any operating authority may obtain prohibitive and mandatory injunctions against any person, firm, or corporation polluting its water supply or refusing to obey lawful regulations adopted by the operating authority or the State Board of Health for the protection of any municipal water supply.

History. Acts 1959, No. 204, § 11; A.S.A. 1947, § 19-4238.2.

14-251-106. Recreational activities on lands and waters authorized — Exceptions.

(a) The operating authority of any municipally owned waterworks system which maintains adequate controls against pollution shall have the authority to permit recreational activities upon the lands and waters owned by the municipality for waterworks purposes, to construct recreational facilities, to collect fees and rentals for permitting recreational activities, and to prescribe rules and regulations prohibiting, permitting, and governing recreational activities.

(1) The rules and regulations shall have the force and effect of any other laws of this state and shall be effective wherever the lands and waters are located.

(2) A copy of all rules and regulations, or amendments thereto, adopted by the operating authority shall be furnished to the State Board of Health within thirty (30) days after adoption.

(3) If the operating authority elects to permit hunting or fishing upon its premises, the laws of this state and the rules and regulations of the Arkansas State Game and Fish Commission governing hunting and fishing shall remain in full force and effect and may not be abrogated by the rules and regulations of the operating authority.

(b) Regardless of any rule or regulation adopted by the operating authority, it shall be unlawful for any person to wade, bathe, or swim in any lake or reservoir of less than seven hundred (700) acre surface used by a municipality for its water supply, or to wade, bathe, or swim in that part of any nonnavigable stream located upon land belonging to the municipality which lies above the water intake or impounding dam owned by the municipality. However, the prohibition set forth in this subsection shall not apply to reservoirs whose water is diverted into a natural stream and flows by gravity down the stream three (3) or more miles before reaching the water intake of the municipality unless all of the land of the stream belongs to the municipality.

(c) It shall be unlawful for any unauthorized person to camp upon land not owned by him which is located above any impounding dam for the municipal water supply and within the drainage area of the reservoir, lake, or nonnavigable stream from which the water supply is taken. However, where any land adjoining the drainage area, reservoir, lake, or nonnavigable stream from which the water supply is taken is within the confines of any national forest reserve or national park, persons may camp upon the lands enclosed in the national forest reserve or national park upon such terms and conditions which are or may be permitted by the rules and regulations governing the national forest reserves or national parks.

History. Acts 1959, No. 204, §§ 3-5; A.S.A. 1947, §§ 19-4232 — 19-4234.

CASE NOTES

Cited: Magruder v. Arkansas Game & Fish Comm'n, 293 Ark. 39, 732 S.W.2d 849 (1987).

14-251-107. Lease of property for recreational purposes.

(a) The operating authority may lease portions of its property for recreational purposes upon such terms as it deems advisable and may permit the lessee to construct upon the leased premises such recreational and merchandising facilities as the operating authority thinks proper.

(b) Public notice of intention to lease the premises shall be published at least one (1) time and at least two (2) weeks before the bid date in a newspaper of general circulation in the county where the municipality is situated.

(c) The operating authority may reject all bids or may accept the bid which it believes most advantageous, bearing in mind the experience and financial resources of the bidder.

History. Acts 1959, No. 204, § 6; A.S.A. 1947, § 19-4235.

14-251-108. Designation of warden.

(a) Any employee of the operating authority may be designated as a warden.

(b) Wardens shall have the authority to arrest or apprehend any person whom they believe to have violated this chapter, or the boating laws of this state, or the rules and regulations of the operating authority which are authorized in this chapter, or the rules and regulations of the State Board of Health pertaining to protection of municipal water supplies and may take the offender when apprehended before any court having jurisdiction of the offense. Wardens shall have no authority to make arrests for violation of the game and fish laws, rules, and regulations of this state.

History. Acts 1959, No. 204, § 7; A.S.A. 1947, § 19-4237.

14-251-109. Nonliability of employees.

No municipality or operating authority permitting any activities authorized by this chapter shall be liable for the torts of its servants, agents, or employees, committed while acting within the scope of their employment in carrying out the duties assigned to them in connection with the aforesaid recreational activities.

History. Acts 1959, No. 204, § 10; A.S.A. 1947, § 19-4238.1.

14-251-110. Disposition of fees, rentals, etc.

All fees, rentals, or other income of any type derived by the operating authority as a result of the acts authorized in this chapter, may be treated as recreational rather than as water revenues and may be used to defray the cost of providing or maintaining recreational facilities and providing for protection of the water supply against pollution because of recreational activities.

History. Acts 1959, No. 204, § 9; A.S.A. 1947, § 19-4236.

CHAPTERS 252-260

[Reserved]

SUBTITLE 16. PUBLIC HEALTH AND WELFARE GENERALLY

CHAPTER 261

GENERAL PROVISIONS

[Reserved]

CHAPTER 262

LOCAL HEALTH AUTHORITIES

SECTION.
14-262-101. Penalties.
14-262-102. City board of health.
14-262-103. City health officer.
14-262-104. County health officer.
14-262-105. Expenses and claims.
14-262-106. County or district health departments — Establishment.
14-262-107. County or district health departments — Jurisdiction.
14-262-108. County or district health departments — Personnel.
14-262-109. County or district health departments — Powers and duties.
14-262-110. County or district health departments — Dissolution.
14-262-111. County or district health departments — Joining or withdrawing.
14-262-112. Public health officers — Powers and duties.
14-262-113. County or district boards of health — Appointment.
14-262-114. County or district boards of health — Meetings — Compensation.
14-262-115. County or district boards of health — Powers and duties.
14-262-116. City health department in cities with a population of 25,000 or more — City board of health — City health officer.
14-262-117. Legal action and adviser.
14-262-118. Employment status.
14-262-119. County Organization of State Aid Fund.

Preambles. Acts 1925, No. 360 contained a preamble which read: "Whereas, It is generally recognized that the best results are secured from intensive county health work co-ordinated with the State health program, and

"Whereas, Educations, health authorities and many others recognize that much greater returns will be received from the expenditures of educational funds and that less economic waste will result if the children are free from malaria, hookworm disease, malnutrition and serious correctable defects, Therefore."

Acts 1979, No. 601 contained a preamble which read: "Whereas, the health of the youth in the State should be given primary consideration by all public health agencies; and

"Whereas, the congregation and close relationship of young people in the public schools increases the risk of the rapid spread of contagious diseases; and

"Whereas, the public school officials and public health agencies should cooperate closely to protect the health of the students in the public schools and to avoid the spread of disease among students;

"Now therefore...."

Effective Dates. Acts 1875, No. 1, § 95: effective on passage.

Acts 1913, No. 96, § 33: approved Feb. 25, 1913. Emergency declared.

Acts 1949, No. 79, § 1: approved Feb. 11, 1949. Emergency clause provided: "Whereas, it has been found that an acute shortage of Medical Doctors is vitally affecting the public health of the State; and

"Whereas, it has been found that time spent in the armed services should be counted as time spent within the State; and

"Whereas, this Act being necessary for the preservation of the public peace, health and safety, an emergency is declared to exist and this Act shall be in full force and effect from and after its passage."

Acts 1949, No. 186, § 15: approved Feb. 28, 1949. Emergency clause provided: "Whereas, the control, supervision, and quarantine of contagious communicable diseases and the maintenance and supervision expedient for the preservation of public safety, peace and health that this act become immediately effective and shall be in full force and effect from and after its passage."

Acts 1975 (Extended Sess., 1976), No. 1065, § 2: Jan. 29, 1976. Emergency clause provided: "It is hereby found and determined by the General Assembly that clarification of the employment status of certain employees of city and county health offices is necessary for the continued efficient provision of health services to the people of Arkansas. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 146, § 4: Mar. 10, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to current revenue short falls the services offered by the Department of Health to the citizens of this State are threatened; that an equitable method of maintaining these services is to provide for a fee to be paid by those citizens who request the assistance of the State Department of Health; that this Act is designed to provide for the collection of such fees and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 864, § 3: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case Ricarte v. State, CR 86-31, a question has arisen over the validity of Act 1065 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 39 Am. Jur. 2d, Health, § 9 et seq.

Ark. L. Rev. Legal Control of Business in Arkansas, 5 Ark. L. Rev. 137.

C.J.S. 62 C.J.S., Mun. Corp., § 651 et seq.

14-262-101. Penalties.

(a) Every firm, person, or corporation violating any of the provisions of this chapter, or any of the orders, rules, or regulations made and promulgated in pursuance hereof, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or by imprisonment not exceeding one (1) month, or both. Each day of violation shall constitute a separate offense.

(b)(1) Every firm, person, or corporation who violates any of the rules or regulations issued or promulgated by the board, or who violates any condition of a license, permit, certificate or any other type of registration issued by the State Board of Health may be assessed a civil penalty by the board. The penalty shall not exceed one thousand dollars ($1,000) for each violation. Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessments. However, no civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing on the violation.

(2) All fines collected under this subsection shall be deposited in the State Treasury and credited to the Public Health Fund to be used to defray the costs of administering this section.

(3) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health is authorized to transfer all unexpended funds relative to fines collected under this subsection, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

(4) All rules and regulations promulgated pursuant to this subsection shall be reviewed by the House and Senate Interim Committees on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

History. Acts 1913, No. 96, § 28; C. & M. Dig., § 5146; Pope's Dig., § 6417; A.S.A. 1947, § 82-121; Acts 1987, No. 146, § 2; 1991, No. 990, §§ 2, 5; 1997, No. 179, § 10.

Publisher's Notes. Acts 1913, No. 96, § 28, is also codified as § 20-7-101.

Amendments. The 1997 amendment substituted "House and Senate Interim Committees" for "Joint Interim Committee" in (b)(4).

14-262-102. City board of health.

(a) There is established in each city of the first class and each city of the second class in this state a city board of health which shall be constituted as follows:

(1) The mayor of the city at the first meeting of the city council after assuming the duties of his office shall appoint not less than five (5) persons, two (2) of whom shall be physicians who shall be graduates of reputable medical colleges and of good professional standing, who shall constitute a city board of health, and who shall have and exercise the powers conferred upon such boards by law and by the ordinances of the city; and

(2) The mayor of the city shall be an ex officio member of the board.

(b)(1) The city council shall have the power to establish a board of health.

(2) The board shall have jurisdiction for one (1) mile beyond the city limits, and for quarantine purposes, in cases of epidemic, five (5) miles.

(c) The city council shall have power to invest the board with such powers and impose upon it such duties as shall be necessary to secure the city and its inhabitants from the evils of contagious, malignant, and infectious diseases; to provide for its proper organization and the election or appointment of the necessary officers; and to make such bylaws, rules, and regulations for its government and support as shall be required for enforcing the prompt and efficient performance of its duties and the lawful exercise of its powers.

History. Acts 1875, No. 1, § 6, p. 1; 1913, No. 96, § 14; C. & M. Dig., §§ 5154, 7593; Pope's Dig., §§ 6433, 9679; A.S.A. 1947, §§ 82-203, 82-204.

CASE NOTES

Analysis

Contracts.
Nuisances.
Quarantine.

Contracts.

A contract of the board of health with a member thereof for medical services is void as against public policy, and such member can only recover on a quantum meruit for services rendered, and not on the contract. Spearman v. Texarkana, 58 Ark. 348, 24 S.W. 883 (1894).

Nuisances.

Cities may confer power on board of health to abate nuisance. Gaines v. Waters, 64 Ark. 609, 44 S.W. 353 (1898); Waters v. Townsend, 65 Ark. 613, 47 S.W. 1054 (1898).

Quarantine.

This section has no reference to the place a person may be confined for quarantine purposes, but only to the extent of the jurisdiction beyond the city limits for the better protection of the inhabitants of the city. City of Little Rock v. Smith, 204 Ark. 692, 163 S.W.2d 705 (1942).

City ordinance providing that whenever a person who upon examination is found to be infected with a venereal disease in a communicable stage fails to take treatment adequate for the protection of the public health, city health officer may commit such person to a hospital or other place within the state for treatment was not unconstitutional on ground the regulations were unreasonable. City of Little Rock v. Smith, 204 Ark. 692, 163 S.W.2d 705 (1942).

14-262-103. City health officer.

(a) The office of city health officer is created.

(b) The office of city health officer shall be filled by a competent physician who is legally qualified to practice medicine within this state, a graduate of a reputable medical college, and of reputable professional standing.

(c)(1) It is made the duty of the mayor of each incorporated city and town within this state to elect a qualified person to the office of city health officer, which appointment shall be approved by a majority of the votes of the city council.

(2) The city health officer, after appointment, shall take and subscribe to the constitutional oath of office, shall file a copy of his appointment with the Arkansas State Board of Health, and shall not be deemed to be legally qualified until the copies have been so filed.

(d) In case the authorities mentioned in subsection (c) of this section shall fail, neglect, or refuse to fill the office of city health officer as provided in this section, then the State Board of Health shall have the power to appoint the city health officer to hold office until the local authorities shall fill the office, but only after giving ten (10) days' notice in writing to the local authorities of the desire for the appointment.

(e)(1) Each city health officer shall perform such duties as may be required by the city council and ordinances of city physicians, such duties as may be required of him by general law and city ordinances with regard to the general health and sanitation of towns and cities, and such duties as shall be legally required of him by the mayor, council, or the ordinances of his city or town.

(2) He shall discharge and perform such duties as may be prescribed for him under the directions, rules, regulations, and requirements of the State Board of Health.

(3) He shall be required to aid and assist the State Board of Health in all matters of quarantine, vital and mortuary statistics, inspection, disease prevention and suppression, and sanitation within his jurisdiction.

(4) He shall at all times report to the State Board of Health, in such manner and form as shall be prescribed by the State Board of Health, the presence of all contagious, infectious, and dangerous epidemic diseases within his jurisdiction and shall make such other and further reports in such manner and form and at such times as the State Board of Health shall direct, touching all such matters as may be proper for the State Board of Health to direct.

(5) He shall aid the State Board of Health at all times in the enforcement of proper rules, regulations, and requirements in the enforcement of all sanitary laws, quarantine regulations, and vital statistics collections and shall perform such other duties as the State Board of Health shall direct.

(f) The compensation of city health officers shall be fixed by the mayor and council of the respective towns and cities within this state.

History. Acts 1913, No. 96, §§ 15-20; C. & M. Dig., §§ 5155-5160; Pope's Dig., §§ 6434-6439; A.S.A. 1947, §§ 82-205 — 82-210.

Publisher's Notes. Acts 1913, No. 96, § 15, also provided for the abolishment of the office of city physician in incorporated cities and towns and of boards of health in incorporated towns, and further provided that city physicians then in office would serve as city health officers until the expiration of their terms.

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

CASE NOTES

Regulations of State Board.

Regulation of State Board of Health that any health authority may commit any commercial prostitute or other person found afflicted with infectious disease, who refuses or fails to take treatment adequate for the protection of the public health, to a hospital or other place in the state for treatment, authorized city health officer to commit a person convicted of prostitution and found infected with a venereal disease to a place outside the city but within the state for treatment. City of Little Rock v. Smith, 204 Ark. 692, 163 S.W.2d 705 (1942).

14-262-104. County health officer.

(a) The office of county health officer is created in each county within the state.

(b) The State Board of Health, with the approval of the county judge, shall appoint for each county in this state a health officer who shall serve for a term of two (2) years.

(c) The county health officer shall be a graduate of a reputable medical college and shall have had at least three (3) years' experience in the practice of medicine in this state; however, the time spent in the practice of medicine while in the services of the Armed Forces of the United States shall be accepted as equivalent to time spent in the practice of medicine in Arkansas.

(d)(1) Each county health officer shall perform such duties as have been required of county physicians with respect to caring for the prisoners in county jails, caring for the inmates of county poor farms and hospitals, discharging the duties of county quarantine, and such other duties as have been lawfully required of the county physician. He shall perform such duties as may be prescribed for him under the rules, regulations, and requirements of the State Board of Health.

(2) He shall also be required to aid and assist the State Board of Health in all matters of local quarantine, inspection, prevention and suppression of disease, vital and mortuary statistics, and general sanitation within his county, and shall make such reports to the State Board of Health as shall be demanded of him.

(e) The county health officer shall receive for his services an annual salary to be fixed by the county court, which may be payable monthly out of the county treasury.

(f) Upon the failure of the county health officer to perform the duties of his office, as required by this section, he may be removed by the State Board of Health.

History. Acts 1913, No. 96, § 13; C. & M. Dig., § 5153; Pope's Dig., § 6432; Acts 1949, No. 79, § 1; A.S.A. 1947, § 82-201.

Publisher's Notes. Acts 1913, No. 96, § 13, also provided for the abolishment of the office of county physician and of county boards of health, and further provided that county physicians then in office would serve as county health officers until the expiration of their terms.

CASE NOTES

Nature of Position.

The position of county health officer is not an office and does not come within the constitutional provision concerning officers holding over after the expiration of their respective terms until the election and qualification of their successors. Middleton v. Miller County, 134 Ark. 514, 204 S.W. 421 (1918).

14-262-105. Expenses and claims.

(a) All expenses legally incurred for the work of protecting the public health outside of cities and towns shall be paid by the county in which the expense is incurred, and claims shall be allowed by the county court when proved as other claims against a county are required by law to be proved; however, every claim must be approved by the county health officer before allowance.

(b) The expense legally incurred for the protection of public health inside corporate limits of cities and towns shall be paid out of the treasury of the cities and towns in which the work is done.

(c) All of the expenditures made by representatives of the State Board of Health and chargeable, under the provisions of this act, to any county, city, or town shall be made only with the advice and consent of the county judge of the county, or of the city board of health in any city of the first or second class, or of the mayor and town council in any incorporated town.

(d) From the judgment of the county court upon a claim, the claimant or any taxpayer of the county may appeal to the circuit court and thence to the Supreme Court.

History. Acts 1913, No. 96, § 22; C. & M. Dig., § 5137; Pope's Dig., § 6408; A.S.A. 1947, § 82-211.

Meaning of "this act". Acts 1913, No. 96, codified as §§ 14-262-101 — 14-262-105, 20-7-101 — 20-7-106, 20-7-109, 20-7-110, 20-7-114, 20-7-118, 20-7-121, 20-7-122, and 20-7-125.

14-262-106. County or district health departments — Establishment.

(a) Any county may, by proper order of the county court, establish and maintain a county health department.

(b) Any two (2) or more counties may, with approval of the State Board of Health and, by order of the county court of the respective counties, establish and maintain a district health department.

(c) As used in this act, unless the context otherwise requires, "department" means a county or district health department which shall consist of a public health officer and all other personnel employed or retained under the provisions of this act.

(d)(1) Whenever a petition requesting the establishment and maintenance of a county health department is signed by fifteen percent (15%) or more of the qualified electors of a county and is presented to the county court of that county, the county court shall, by an order, instruct the county clerk to certify to the county board of election commissioners the proposition of the establishment and maintenance of such a health department, and the county board of election commissioners shall make provision for submitting the proposition to the electors of the county at the next general election.

(2) If a majority of all the votes cast upon the proposition is in favor of it, the county court shall immediately proceed to establish a health department.

(e)(1) Whenever a petition requesting the establishment and maintenance of a multiple-county health department is signed by fifteen percent (15%) or more of the qualified electors in each of at least two (2) adjacent counties, is presented to the respective county courts, and is approved by the State Board of Health, each county court shall, by an order, instruct its respective county clerk to certify to its county board of election commissioners the proposition of the establishment and maintenance of such a health department, and the county board of election commissioners shall make provision for submitting the proposition to the electors of the county at the next general election.

(2) If a majority of all the votes cast upon the proposition in each county is in favor of it, the several county courts shall immediately proceed to organize a multiple-county health department and shall agree on the conditions governing the organization and operation of the department and the apportionment of the cost thereof.

(f) In the event three (3) or more counties have joined in petitioning for the establishment and maintenance of a multiple-county health department and not all of the counties shall vote in favor of the proposition, but two (2) or more do vote in favor of the proposition, then, with the approval of the State Board of Health, they shall proceed to organize a multiple-county health department; however, no county shall be forced to participate in the establishment and maintenance of a multiple-county health department that votes "NO" regarding the creation of the health unit.

(g) No county, whether in a multiple unit or otherwise, voting "NO" regarding the establishment and maintenance of a county health department shall be forced to create a health unit.

History. Acts 1949, No. 186, §§ 1, 2; A.S.A. 1947, §§ 82-214, 82-215.

Meaning of "this act". Acts 1949, No. 186, codified as §§ 14-262-106 — 14-262-117.

14-262-107. County or district health departments — Jurisdiction.

(a) The jurisdiction of any county or district health department shall extend over all unincorporated areas and over all municipal corporations within the territorial limits of the county or the counties comprising the district, but not over the territory of any municipal corporation which at the time of the establishment of the county or district health department had a population in excess of twenty-five thousand (25,000) according to the most recent federal census and which maintains its own health department and employs a supervising health officer; however, any such municipal corporation not otherwise within the jurisdiction of a department, by the passage of an ordinance by three-fourths (¾) of the elected members of its city council, board of trustees, or other governing body, and by agreement with the county or district board of health approved by the State Board of Health, may merge its department with the county or district health department.

(b) All local boards of health existing within the county or district, except those of any municipal corporation which at the time of the establishment of the county or district health department had a population in excess of twenty-five thousand (25,000) according to the most recent federal census and which maintains its own health department, employs a supervising health officer, and does not elect to merge its health activities with the county or district health department shall be dissolved upon the organization of a county or district health department under the provisions of this act, or upon the acceptance of a county into a district health department.

(c) All cities of the first class under twenty-five thousand (25,000) in population incorporated in any county or district health department may contribute an equitable share of the annual financial cost of the health department.

History. Acts 1949, No. 186, § 4; A.S.A. 1947, § 82-217.

Meaning of "this act". See note to § 14-262-106.

14-262-108. County or district health departments — Personnel.

(a) The administrative and executive head of each county and district health department shall be a public health officer, which office is created by this section.

(b)(1) The public health officer shall be appointed by the county or district board of health to serve for a term of four (4) years and shall possess such qualifications as may be prescribed by the State Board of Health.

(2) He shall be employed on a full-time basis and shall receive such compensation and expense allowance as may be recommended by the county or district board and with the approval of the State Board of Health.

(c)(1) All other personnel required by a department shall be appointed by the public health officer from the civil service list, where one

exists, and shall possess qualifications approved by the State Board of Health.

(2) All personnel shall perform the duties as shall be prescribed by the public health officer.

History. Acts 1949, No. 186, § 6; A.S.A. 1947, § 82-219.

14-262-109. County or district health departments — Powers and duties.

(a) Each county and district health department shall have and exercise, in addition to all other powers and duties imposed upon it by law, the following powers and duties:

(1) To administer and enforce the laws pertaining to public health and vital statistics and the orders, rules, regulations, and standards promulgated by the State Board of Health;

(2) To investigate and control the cause of epidemic and communicable disease affecting the public health;

(3) To establish, maintain, and enforce isolation and quarantine, and, in pursuance thereof and for this purpose only, to exercise such physical control over property and over the persons of the people within the jurisdiction of the department as the department may find necessary for the protection of the public health;

(4) To make any necessary sanitary and health investigations and inspections on its own initiative or in cooperation with the Department of Health as to any matters affecting public health, within the jurisdiction and control of the department;

(5) To cooperate with the Department of Health and the State Board of Health in all matters pertaining to public health;

(6) To initiate and carry out health programs, not inconsistent with law, that may be deemed necessary or desirable for the protection of the public health and the control of disease.

(b) A representative of the county health department may visit any or all schools in a school district when requested to do so by the superintendent of schools or other appropriate official of the district for the purpose of checking for and assisting with medical problems of students at the school.

History. Acts 1949, No. 186, § 7; 1979, No. 601, § 1; A.S.A. 1947, §§ 82-220, 82-220.1.

14-262-110. County or district health departments — Dissolution.

(a) Any county or district health department may be dissolved by a referendum initiated by petition or submitted by vote as prescribed in § 14-262-106.

(b) The proposition shall be stated "FOR the discontinuance of the county (or district) health department" and "AGAINST the discontinuance of the county (or district) health department."

History. Acts 1949, No. 186, § 9; A.S.A. 1947, § 82-222.

14-262-111. County or district health departments — Joining or withdrawing.

(a)(1) Any county adjacent to a district maintaining a district health department may, with the approval of the State Board of Health, become a part of the district by either of the following two (2) methods:

(A) By agreement between the county courts of the counties comprising the district;

(B) By a petition signed by one hundred (100) or more of the qualified electors of the county presented to the county court of the county. The court shall thereupon, by an order, direct the clerk of the county to certify to the county board of election commissioners the proposition to be submitted to the electors of the county at the next general election, and, in the event that a majority vote in favor of the proposition, the county shall thereupon be added to the district.

(2) Upon being accepted into a district, a county shall thereupon become subject to all of the provisions of this act as though it were originally a part of the district.

(b) Any municipal corporation which has voluntarily merged its health department with a county or district health department, under the authority of § 14-262-107, may withdraw from the county or district health department by resolution of its city council, board of trustees, or other governing body; however, no municipal corporation may withdraw from a department within the two-year period following the municipal corporation's becoming a part of the department, and then only after ninety (90) days' written notice given to the department.

(c) Any county which has become a part of a district health department may withdraw from the district health department pursuant to the following procedure: Upon a petition of one hundred (100) or more qualified electors, the county court shall, by an order, direct the county clerk to certify to the county board of election commissioners the question of withdrawal, which shall be submitted to the electors of the county at the next general election; in the event the vote is favorable to the withdrawal, the county court shall thereupon formally withdraw the county from the district health department, but only after ninety (90) days' written notice is given to the district health department, and the withdrawal may not be less than two (2) years after the entry of the county into the district health department.

History. Acts 1949, No. 186, § 10; A.S.A. 1947, § 82-223.

Meaning of "this act". See note to § 14-262-106.

14-262-112. Public health officers — Powers and duties.

In addition to the other powers and duties conferred and imposed upon a public health officer in this act, the officer, in person or through the other officers and employees of the department, shall have and exercise the following powers and duties:

(1) To administer and enforce the public health laws of the State of Arkansas; the orders, rules, regulations, and standards of the State Board of Health; and the orders, rules, and regulations of the county or district board of health;

(2) To exercise all powers and duties conferred and imposed upon county or district health departments not expressly delegated to county or district boards of health by the provisions of this act;

(3) To act as the local registrar of vital statistics for the area over which his county or district health department has jurisdiction, as follows:

(A) In county health departments, he shall collect fees for this service that shall be credited to the department fund and used in the administration of the department;

(B) In district health departments, the health officer shall appoint a deputy registrar in each county who shall be a full-time employee of the department, and the fees collected for this service shall be credited to the department and used in the administration of the department.

(4) To be custodian of all property and records of the department;

(5) To submit to the State Board of Health an annual report of the administration of his department and such information as may be required, to maintain such records as may be prescribed by the State Board of Health, and to provide such reports as may be requested, including the provision of an annual report.

History. Acts 1949, No. 186, § 8; A.S.A. 1947, § 82-221.

Meaning of "this act". See note to § 14-262-106.

14-262-113. County or district boards of health — Appointment.

(a) Within thirty (30) days after the entry of an order by the county court to establish and maintain a county or district health department, the county court or courts, as the case may be, shall proceed to organize the department by the appointment of a county or district board of health.

(b)(1) Every county board of health shall consist of five (5) members, at least one (1) of whom shall have a degree of Doctor of Medicine from a medical school approved by the Council on Medical Education and Hospitals, or its successor, of the American Medical Association, to be appointed by the county judge for five-year terms, except that the members first appointed shall be so designated so that one shall serve for one (1) year, one for two (2) years, one for three (3) years, one for four (4) years, and one for five (5) years, from January 1 of the year appointed. Thereafter, full term appointments shall be for five (5) years.

(2) All members shall be residents of the county.

(3) Appointments shall be made to the board so that no business or professional group shall constitute a majority of the board.

(4) Any vacancy on the board shall be filled by the county judge in the same manner as full-term appointments by the appointment of a qualified person for the unexpired term.

(c)(1) Every district board of health shall consist of two (2) members for each county who shall reside in the county from which they are appointed, one (1) of whom shall have a degree of Doctor of Medicine from a medical school approved by the Council on Medical Education and Hospitals, or its successor, of the American Medical Association, to be appointed by the county judge of the county in which they reside, together with one (1) additional member to be chosen from the district by the members so appointed; however, the additional member shall not be a member of the medical profession.

(2) The members of the board of health first appointed shall be designated by the county judge so that one member from each county shall serve for three (3) years and one member for five (5) years; thereafter, all full-term appointments shall be for five (5) years. The additional member to be chosen by the members so appointed shall serve five (5) years.

(3) Appointments shall be made to the board so that no business or professional group shall constitute a majority of the board.

(4) Any vacancy on the board shall be filled by the county judge in the same manner as full-term appointments by the appointment of a qualified person for the unexpired term.

History. Acts 1949, No. 186, § 2; A.S.A. 1947, § 82-215.

14-262-114. County or district boards of health — Meetings — Compensation.

(a)(1) Each board shall, at its organizational meeting, elect from its members a president and such other officers as it shall determine.

(2) The public health officer of the county or district health department, as provided in this act, may serve as secretary, in the discretion of the board, but he shall not be a member of the board.

(3) All officers shall hold office at the pleasure of the board.

(b)(1) Regular meetings of the board shall be held not less than once every year, at such time as it may be fixed by resolution of the board.

(2) Special meetings of the board may be called by the president, by the county or district public health officer, or by a majority of the members of the board, at any time with three (3) days' notice by mail or, in case of emergency, with twenty-four (24) hours' notice by telephone or telegraph.

(3) The board may adopt, and at any time may amend, bylaws in relation to its meetings and the transaction of its business.

(4) A majority shall constitute a quorum of the board.

(5) Members shall serve without compensation, but shall be reimbursed by the county in which the member resides for the actual and legal expenses incurred in attending any called regular or special meeting of the board.

History. Acts 1949, No. 186, § 3; A.S.A. 1947, § 82-216.

Meaning of "this act". See note to § 14-262-106.

14-262-115. County or district boards of health — Powers and duties.

(a) In addition to all other powers and duties conferred and imposed upon county and district boards of health by the provisions of this act, the boards shall have and exercise the following specific powers and duties:

(1) To provide, equip, and maintain suitable offices and all necessary facilities for the proper administration and operation of the county or district health department;

(2) To determine general policies to be followed by the public health officer in administering and enforcing the public health laws, rules, and regulations of the board and the orders, rules, regulations, and standards promulgated by the State Board of Health;

(3) To act in an advisory capacity to the public health officer on all matters pertaining to public health;

(4) To issue from time to time such orders and to adopt such rules and regulations, not inconsistent with the public health laws of this state nor with the orders, rules, and regulations of the State Board of Health, as the board may deem necessary for the proper exercise of the powers and duties vested in or imposed upon a county or district health department or board of health by this act.

(b) All statutes, rules, and regulations in force on February 28, 1949, which relate to matters concerning public health in municipalities coming under the jurisdiction of the county or district boards, as set forth in § 14-262-107, shall remain in full force and shall be enforceable by the boards unless and until they are amended or repealed by proper authority or unless they are repugnant to the provisions of this act.

History. Acts 1949, No. 186, § 5; A.S.A. 1947, § 82-218.

Meaning of "this act". See note to § 14-262-106.

14-262-116. City health department in cities with a population of 25,000 or more — City board of health — City health officer.

(a) Within thirty (30) days after the entry of an order by the city council of a city of twenty-five thousand (25,000) or more, according to the most recent federal census, to establish and maintain a city health department, the city council shall proceed to organize a health department by the appointment of a city board of health.

(b)(1) Every city board of health shall consist of five (5) members, two (2) of whom shall have a degree of Doctor of Medicine from a medical school approved by the Council on Medical Education and Hospitals, or its successor, of the American Medical Association, to be appointed by the mayor for a five-year term, except that the members first appointed shall be so designated that one shall serve for one (1) year, one for two (2) years, one for three (3) years, one for four (4) years, and one for five (5) years, from January 1 of the year appointed; thereafter, full-term appointments shall be for five (5) years.

(2) All members shall be residents of the city.

(3) Appointments shall be made to the board so that no business or professional group shall constitute a majority of the board.

(4) Any vacancy on the board shall be filled by the mayor in the same manner as full-term appointments by the appointment of a qualified person for the unexpired term.

(5) At its organizational meeting, the board shall elect from its members a president and such other officers as it shall determine.

(6) The city health officer of the city health department, as provided in this act, in the discretion of the board, may serve as secretary, but he shall not be a member of the board.

(7) All officers shall hold office at the pleasure of the board.

(8) Regular meetings of the board shall be held not less than one (1) time every year, at such time as may be fixed by resolution of the board. Special meetings of the board may be called by the president, by the city health officer, or by a majority of the members of the board, at any time with three (3) days' notice by mail, or, in case of emergency, with twenty-four (24) hours' notice by telephone or telegraph.

(9) The board may adopt, and at any time amend, bylaws in relation to its meetings and the transaction of its business.

(10) A majority shall constitute a quorum of the board.

(11) Members shall serve without compensation.

(12) The powers and duties of the city board of health are to be the same as set forth in § 14-262-115.

(c)(1) In a city of twenty-five thousand (25,000) or more establishing a city health department, the office of city health officer shall be created and filled by a doctor who has a degree of Doctor of Medicine from a medical school approved by the Council on Medical Education and Hospitals, or its successor, of the American Medical Association, and who shall possess such qualifications as may be prescribed by the State Board of Health.

(2) The city health officer of each incorporated city of twenty-five thousand (25,000) or more which establishes a city health department shall be appointed by the mayor and approved by the city council to serve on a full-time basis for four (4) years.

(3) The city health officer, after appointment, shall take and subscribe to the constitutional oath of office, shall file a copy of his appointment with the State Board of Health, and shall not be deemed qualified to serve until the copy has been filed.

(4) Each city health officer shall perform the following:

(A) Such duties as may be required by the city board of health and the city council;

(B) Such duties as may be required of him by general law and the city board of health, mayor, council, or ordinances with regard to the general health and sanitation of towns and cities; and

(C) Such duties as shall be legally required of him by general law and the city board of health, mayor, councils, or ordinances of the city or town, or by the directions, rules, regulations, and requirements of the State Board of Health.

(5) The powers and duties of the city health officer shall be the same as those set forth in § 14-262-112.

History. Acts 1949, No. 186, § 11; A.S.A. 1947, § 82-224.

Meaning of "this act". See note to § 14-262-106.

14-262-117. Legal action and adviser.

The prosecuting attorney of the judicial circuits, his deputy, or the city attorney, the case as may be, shall, without fee or reward, advise and give legal assistance to the public health officer and the county, district, or city board of health and shall bring any civil or criminal action upon the request of the health officer, the county, district, or city board of health, or the State Board of Health on all questions relating to the enforcement of the provisions of this act.

History. Acts 1949, No. 186, § 12; A.S.A. 1947, § 82-225.

Meaning of "this act". See note to § 14-262-106.

14-262-118. Employment status.

Those employees of city and county health offices who are occupying state-authorized positions and are being paid by the Department of Health from either state or federal funds shall be deemed to be state employees under the full direction and supervision of the Department of Health.

History. Acts 1975 (Extended Sess., 1976), No. 1065, § 1; A.S.A. 1947, § 82-226; reen. Acts 1987, No. 864, § 1.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 864, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-262-119. County Organization of State Aid Fund.

(a)(1) In addition to any and all other appropriations made for the State Board of Health, there may be made an appropriation which shall be known as the County Organization of State Aid Fund, which shall be expended exclusively for this purpose.

(2) The fund shall be available to any county whenever the county shall make an appropriation of an adequate sum of money, to be

approved by the Director of the Department of Health, necessary to do effective work.

(3) All counties which shall be found organized for this work on July 1 of each year shall receive priority in the allocation of funds.

(b)(1) Before any county shall receive state aid under the provisions of this section, a cooperative budget shall be prepared by the county judge, the Director of the Department of Health, and any other agency which may be contributing and shall be signed by each.

(2) The Director of the Department of Health shall draw vouchers against the State Aid Fund, as provided in the cooperative budget, in the usual manner.

History. Acts 1925, No. 360, §§ 1, 2; Pope's Dig., §§ 6444, 6445; A.S.A. 1947, §§ 82-212, 82-213.

CHAPTER 263

BOARD OF GOVERNORS FOR COUNTY HOSPITALS

SECTION.
14-263-101. Legislative intent.
14-263-102. Continuation of existing boards of governors.
14-263-103. Creation.
14-263-104. Members.
14-263-105. Powers and duties.
14-263-106. Contracting or leasing of hospital facilities.

Effective Dates. Acts 1977, (Ex. Sess.), No. 13, § 8: Aug. 15, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to the well being of the residents of the various counties that the county hospitals in the respective counties be under the management, control and operation of a separate Board of Governors selected and functioning in substantially the same manner as was provided for in Act 481 of 1949 and acts amendatory and supplemental thereto; that this Act is designed to substantially reenact the laws relating to County Hospital Boards of Governors which were repealed by Act 742 and to amend Section 107 of Act 742 to exempt County Hospital Boards of Governors from the reorganization provided for therein, and to thereby insure the continued effective and efficient operation of the various county hospitals under the supervision and direction of the respective County Boards of Governors in substantially the same manner as was provided for in the laws repealed by Act 742 and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

14-263-101. Legislative intent.

(a) It is found and determined by the General Assembly that § 14-14-101 et seq. specifically repealed the existing laws relating to county hospital boards of governors and provided that county hospital boards of governors, along with various other county boards and commissions, would cease to exist on July 1, 1978, or sooner if so provided by

ordinance of the quorum court, and that the functions and duties of those boards would thereafter be assigned to various county departments.

(b) The General Assembly declares that it would be highly detrimental to the various county hospitals in this state to abolish the boards of governors of those hospitals and to transfer the responsibility for the management and operation of those hospitals to a county department.

(c) It is the purpose and intent of the General Assembly to substantially reenact the laws relating to county hospital boards of governors which were repealed by § 117 of Acts 1977, No. 742, to amend § 14-14-712 so as to exclude county hospital boards of governors from the provisions of § 14-14-712, relating to the reorganization of county boards and commissions, and to assure that the various county hospital boards of governors in the state will continue to function and have the authority and responsibility for the management, control, and operation of the respective county hospitals in substantially the same manner and to the same extent as was provided in Acts 1949, No. 481 [repealed] and the various acts amendatory and supplemental thereto, as if those acts had not been repealed and as if county hospital boards of governors had never been included in the provisions of § 14-14-712; however, in keeping with the intent of Arkansas Constitution, Amendment 55, the quorum courts of the respective counties shall have the authority as set forth in this chapter and § 14-14-712 regarding the appointment and functions of county hospital boards of governors.

History. Acts 1977 (Ex. Sess.), No. 13, § 7; A.S.A. 1947, § 17-1506.

14-263-102. Continuation of existing boards of governors.

(a) The various county hospital boards of governors in existence on August 15, 1977, shall continue in existence and shall function under the provisions of this chapter.

(b) The members of all those boards serving on August 15, 1977, shall continue to serve for the respective terms for which they were appointed, and their successors shall be selected in the manner and for the terms provided in this chapter.

History. Acts 1977 (Ex. Sess.), No. 13, § 5; A.S.A. 1947, § 17-1505.

14-263-103. Creation.

(a) There is created in each county in this state owning a county hospital a board of governors which shall be charged with the responsibility of the management, control, and operation of the county hospital as provided in this chapter.

(b)(1) If there is more than one (1) county hospital in any one (1) county, the hospitals may be operated under the management and control of a single board of governors, or the quorum court of the county,

if it so elects, may establish, by an appropriate ordinance, a board of governors of each county hospital.

(2) The ordinance of the quorum court providing for a separate board of governors for each such hospital shall designate the county hospital over which each board shall have jurisdiction.

(3) When the quorum court establishes a separate board of governors for each county hospital in the county, each board of governors shall be constituted, shall be appointed, and shall have the duties, powers, and responsibilities with reference to the county hospital over which it has jurisdiction as specified in this chapter.

History. Acts 1977 (Ex. Sess.), No. 13, § 1; A.S.A. 1947, § 17-1501.

CASE NOTES

Cited: Baxter County Newspapers, Inc. v. Medical Staff of Baxter Gen. Hosp., 273 Ark. 511, 622 S.W.2d 495 (1981).

14-263-104. Members.

(a) The board of governors shall consist of seven (7) members, who shall be qualified electors of the county in which the hospital is located and who shall be appointed by the county judge and approved by the quorum court.

(b)(1) The regular term of office of each member so appointed by the county judge and approved by the quorum court shall begin as of July 1 next following the expiration of the term of his predecessor and shall end on June 30 of the seventh year thereafter; however, the terms of the original members shall be designated and arranged by the county judge so that the term of one (1) member shall expire on June 30 next following the date of his appointment, and the terms of the other members shall expire, respectively, on June 30 of the first, second, third, fourth, fifth, and sixth years thereafter.

(2) Interim appointments shall be for the unexpired term.

(3) Each board member shall hold office after the expiration of his term of office until his successor has been appointed and qualified.

(4) All appointments made to fill vacancies caused by expiration of terms or by death shall be for a period of seven (7) years.

(5) The duty to appoint the initial members of the board and to fill vacancies in case of death, resignation, expiration of terms, or for any other reason shall be that of the county judge with approval of the quorum court.

(c)(1) In any county in which there are two (2) county-owned hospitals under the management, control, and direction of a single board of governors, the membership of the board of governors for those hospitals may be increased to eight (8) members, by ordinance of the quorum court.

(2) When a county hospital board of governors is increased to eight (8) members as authorized in this subsection, the additional member of the board shall be appointed in the same manner, shall possess the same qualifications, shall have the same authority and responsibility, and shall be subject to removal for cause as other members of the board.

(3) When the membership of a board is increased to eight (8) members, the person first appointed to fill the additional position shall be appointed for a term of eight (8) years, and thereafter all successor appointments to the board shall be for terms of eight (8) years in such manner that the term of one (1) member of the board shall expire each year.

(d) In the event of misconduct or refusal to act, any member of the board may be removed for cause.

(e) The board of governors shall be an honorary board, and its members shall receive no compensation for their services, nor shall they be liable individually for any civil damages arising out of the operation of the hospital.

History. Acts 1977 (Ex. Sess.), No. 13, § 2; A.S.A. 1947, § 17-1502.

CASE NOTES

Removal.

Since the sole authority to appoint and remove members of the county hospital board is placed in the county judge, hearings for determination of whether board members should be removed are exclusively within his jurisdiction. Wheatley v. Warren, 232 Ark. 123, 334 S.W.2d 880 (1960) (decision under prior law).

Where judge's letter of dismissal of the county hospital board set out no specific reasons for removing the board, the reviewing court was unable to determine the particular acts relied upon by the judge to sustain his action. Wheatley v. Warren, 232 Ark. 123, 334 S.W.2d 880 (1960) (decision under prior law).

14-263-105. Powers and duties.

(a) Within ten (10) days after the appointment of the members of a board created by this chapter, the board shall assemble and elect from its membership a chairman and shall organize for the purpose of performing its duties.

(b) Each board, being charged with the duty of managing, controlling, and supervising the operation of the county hospital, is vested by the terms of this chapter with discretion as to what policies and methods of operation shall be in the best interest of the hospital.

(c) Each board is empowered with the authority to make regulations, employ personnel, and prescribe any and all requirements and other matters pertaining to the operation of the hospital by the board.

(d) Each board shall employ, in addition to other personnel, some competent person to act as administrative officer. The board may require such bond as it shall deem necessary of its manager or other personnel for the performance of their duties, which personnel shall be paid salaries as determined by the board.

(e) The right of the administrative officer or board to make quarterly reports and settlements to the county treasurer is expressly conferred by this chapter.

(f)(1) Each board shall submit monthly reports beginning on the twentieth day of the month following the previous month of operation of the hospital and on the twentieth day of each month thereafter, to the county judge and quorum court.

(2) The reports shall include an accounting of receipts and disbursements and such other reports, data, and information as may be required by the county judge or quorum court, or the reports shall be prepared and submitted in accordance with generally accepted hospital accounting procedures.

(g) Each board is empowered to accept promissory notes from patients for sums due the hospital and to discount the notes to banks, in a commercially reasonable manner, with recourse; but recourse shall be limited to hospital funds and shall not constitute a general claim against the county.

History. Acts 1977 (Ex. Sess.), No. 13, § 3; A.S.A. 1947, § 17-1503.

14-263-106. Contracting or leasing of hospital facilities.

(a) Should the board of governors determine that it would be in the best interest of the citizens of the county that the hospital be operated or leased to some individual, firm, or corporation, the board may contract or lease the equipment and hospital facilities to the individual, firm, or corporation for such period of time and for such consideration and conditions as the board may deem wise, subject to approval of the contract or lease by the county judge and the quorum court of the county in which the hospital is located.

(b) The power to so lease or contract hospital facilities and equipment shall not be subject to the approval of the county judge and quorum court when restricted by county hospitals which were constructed with a federal grant-in-aid pursuant to Public Law 79-725.

History. Acts 1977 (Ex. Sess.), No. 13, § 4; A.S.A. 1947, § 17-1504.

U.S. Code. Public Law 79-725, referred to in this section, is codified as 42 U.S.C. § 201 et seq.

CASE NOTES

Analysis

Leases.
Provisions not mandatory.

Leases.

Provision giving the lessee of county property an option to purchase was void, as was a provision giving him right to any money received in any eminent domain proceeding, such provisions failing to comply with statute governing disposition of county property; however, with the two provisions stricken, the lease was valid. State ex rel. Peevy v. Cate, 236 Ark. 836, 371 S.W.2d 541 (1963) (decision under prior law).

No state law prohibits the voters of a county from using their right of initiative to call for a referendum whereby the people of the county could express their ap-

proval or disapproval of the quorum court's action in leasing a county owned hospital. Proctor v. Hammons, 277 Ark. 247, 640 S.W.2d 800 (1982).

Provisions Not Mandatory.

This section does not require that any county hospital be leased or contracted to any individual or firm; the section is permissive and not mandatory. Proctor v. Hammons, 277 Ark. 247, 640 S.W.2d 800 (1982).

Cited: Bell v. Crawford County, 287 Ark. 251, 697 S.W.2d 910 (1985).

CHAPTER 264

COMMISSIONS FOR MUNICIPAL HOSPITALS

SECTION.
14-264-101. Construction, applicability, and effect.
14-264-102. Creation.
14-264-103. Commissioners — Appointment — Removal.
14-264-104. Commissioners — Powers and duties — Liability.
14-264-105. Commissioners — Rules and regulations — Reports.
14-264-106. Appropriation of city funds for hospital purposes.
14-264-107. Hospital fund.

Cross References. Local government reserve funds, § 14-73-101 et seq.

Tax for maintaining, Ark. Const. Amend. 32.

Effective Dates. Acts 1947, No. 322, § 14: approved Mar. 28, 1947. Emergency clause provided: "Whereas, in certain municipalities hospitals are now being constructed or operated; and whereas, it is to the best interests of the public that said hospitals be operated and controlled in the most economical and feasible manner possible; and whereas, it is to the best interests of the citizens of said municipalities that the operations of said hospitals be in the most economical and business-like manner possible; and whereas, the most economical and proper method of operations may be obtained if this act were put into immediate force and effect; therefore, it is hereby declared that an emergency exists and that this act is necessary for the immediate preservation of the public peace, health and safety and this act, therefore, will take effect and be in force and effect from and after its passage."

14-264-101. Construction, applicability, and effect.

(a) Nothing in this chapter shall be construed as repealing any special act previously passed providing for a board of commissioners to administer or operate municipal hospitals, and this chapter shall apply solely to cities of the first class owning or operating hospitals, including hospitals in the process of construction.

(b) The provisions of this chapter shall be cumulative and shall not be deemed to repeal or supersede any other plan of operation of any municipal hospital as authorized by law since it is the intention of this chapter to provide an additional method of operation of any municipal hospital subject to the terms of this chapter.

History. Acts 1947, No. 322, § 12; A.S.A. 1947, § 19-4712.

14-264-102. Creation.

(a) Any city of the first class, or any city of the second class in counties with a population of not less than seventeen thousand (17,000) nor more than thirty-eight thousand five hundred (38,500), according to the last federal census, which own or operate a municipal hospital, including a municipal hospital in the process of construction, may create a commission, by appropriate action of its city council, for the purpose of operating and managing the hospital.

(b) Any city, as defined in this section, desiring to avail itself of the benefits of this chapter, may enact an ordinance, by a majority vote of the duly elected and qualified members of the city council, creating a hospital commission to be composed of not less than three (3) nor more than seven (7) citizens who are qualified electors of the municipality or of the county in which the municipality is located.

(c) The city may repeal the ordinance creating the commission by an affirmative vote of three-fourths (¾) of the elected and qualified members of the city council.

History. Acts 1947, No. 322, §§ 1, 2; A.S.A. 1947, §§ 19-4701, 19-4702; Acts 1953, No. 315, § 1; 1977, No. 184, § 1; 1991, No. 518, § 1.

14-264-103. Commissioners — Appointment — Removal.

(a) The commissioners shall be appointed by the mayor and confirmed by a majority vote of the elected and qualified members of the city council and shall hold office for a term of five (5) years; however, those commissioners first appointed and confirmed after the passage of this chapter shall serve for terms of one (1), two (2), three (3), four (4), and five (5) years each, to be designated by the mayor and city council. Thereafter, upon the expiration of their respective terms, commissioners appointed by the mayor and approved by a majority vote of the city council shall each be appointed for a term of five (5) years.

(b) In the event of a vacancy occurring on the commission, it shall be filled by appointment by the mayor, subject to the approval of a majority vote of the duly elected and qualified members of the city council.

(c) Each commissioner shall file the oath required of public officials by law in the State of Arkansas.

(d) Upon the appointment of the commissioners as provided in this section, the mayor and city council shall execute such instruments and enact such measures as may be necessary to vest complete charge of the municipally owned or operated hospital in the commissioners.

(e) The city council may require bond of the commissioners, in its discretion, for the faithful performance of their duties.

(f) Any commissioner appointed by the provisions of this chapter may be removed for cause upon a two-thirds (⅔) vote of the elected and qualified members of the city council.

History. Acts 1947, No. 322, §§ 3, 4, 11; A.S.A. 1947, §§ 19-4703, 19-4704, 19-4711.

Publisher's Notes. In reference to the term "passage of this chapter," Acts 1947, No. 322 was signed by the Governor and took effect March 28, 1947.

14-264-104. Commissioners — Powers and duties — Liability.

(a) The commissioners appointed pursuant to this chapter shall have full and complete authority to manage, operate, maintain, and keep in a good state of repair the municipal hospital. They shall have full and complete charge of the building, with the power to handle it as the commissioners shall see fit and deem to be in the best interests of the city.

(b) The commissioners shall have the right to employ or remove managers and all other employees of whatsoever nature, kind, or character and to fix, regulate, and pay their salaries, wages, or other compensation since it is the intention of this chapter to vest in the commissioners the authority to operate, manage, maintain, and control the municipal hospital and to have full and complete charge of it, including the same discretionary powers afforded to the boards of trustees of benevolent or nonprofit corporations in this state; however, the commissioners shall not have the authority or power to sell, mortgage, or encumber the municipal hospital unless otherwise authorized by the statutes of Arkansas.

(c) The commissioners, however, by and with the consent of the city council, shall have the authority and power to lease the hospital to a nonprofit or benevolent organization upon such terms that no profit or dividend shall ever be paid to any person, firm, or corporation; however, nothing contained in this chapter shall be construed to prevent the use, either by the commission or any lessee, of profits arising from the operation of the hospital for the repair, improvement, or additions to the hospitals or the equipment thereof, or for charitable purposes in connection with the operations of the hospital.

(d) The commissioners shall have the exclusive right and power to make purchases of all supplies, apparatus, and other property and things requisite and necessary for the management and operation of the hospital; the management and operation of the hospital shall include the construction thereof and repairs and additions thereto.

(e) The commissioners shall be afforded the same protection from personal liability for their acts as commissioners as is afforded to school directors in connection with their duties in behalf of the school districts which they represent.

History. Acts 1947, No. 322, §§ 5, 6, 9; A.S.A. 1947, §§ 19-4705, 19-4706, 19-4709.

14-264-105. Commissioners — Rules and regulations — Reports.

(a)(1) The commissioners shall have the authority to adopt such rules and regulations as they may deem necessary and expedient for the proper operation and management of the hospital and shall have the authority to alter, change, or amend the rules and regulations at their discretion.

(2) The commissioners shall have the right to adopt and enforce standards for the operation and management of the hospital including the right to apply for and accept membership in accredited hospital societies and organizations and to comply with, and enforce compliance with, the rules and regulations thereof. However, nothing contained in this subsection shall be construed to authorize the adoption of standards less than the minimum standards required by the laws of the State of Arkansas for the operation or management of hospitals coming under the provisions of this chapter.

(b)(1) The commissioners shall submit reports, beginning three (3) months after they take their oath of office and thereafter at such periods as the city council may direct, reporting in full on the construction and operations, including an accounting of receipts and disbursements, to the mayor and city council. They shall furnish such other and further reports, data, and information as may be requested by the mayor or city council.

(2) The reports to the mayor and city council with respect to receipts and disbursements shall be certified by the commissioners as correct.

(3) The commissioners shall further submit an annual audit of the operations of the hospital to the mayor and city council. The fiscal year shall be determined by the mayor and city council.

History. Acts 1947, No. 322, §§ 7, 8;
A.S.A. 1947, §§ 19-4707, 19-4708.

14-264-106. Appropriation of city funds for hospital purposes.

(a) Upon each annual report's being made to the mayor and city council by the commissioners, the city council may lend or appropriate funds from the general revenue fund of the city, or from such other funds as the city may have available, to make up any deficits or to provide such funds as may be necessary to carry on the operations of the hospital.

(b) The city council, at any time other than when the annual report is filed, may lend or appropriate such funds as it deems necessary from the general revenue fund or from such other funds as the city may have available for the purpose of maintaining and operating the hospital.

History. Acts 1947, No. 322, § 10;
A.S.A. 1947, § 19-4710.

14-264-107. Hospital fund.

(a) The commissioners appointed pursuant to this chapter shall have the authority to utilize all revenues derived from the hospital in the operations of the hospital including repairs and additions thereto or the construction thereof.

(b) All funds derived from the use of the hospital shall be segregated into a hospital fund, which fund shall be used exclusively in the operations of the hospital by the commissioners.

(c) Moneys in the hospital fund shall not be mingled with other funds of the city and shall be handled exclusively by the commissioners.

(d) The commissioners shall receive no salary for their services, but they shall be reimbursed from the hospital fund for actual expenses incurred in the performance of their duties.

History. Acts 1947, No. 322, § 9; A.S.A. 1947, § 19-4709.

CHAPTER 265

HEALTH CARE FACILITIES

SECTION.
14-265-101. Definitions.
14-265-102. Applicability and construction.
14-265-103. Authority to acquire, own, manage, and sell health facilities.
14-265-104. Bonds — Authority to issue.
14-265-105. Bonds — Issuance, sale, and execution.
14-265-106. Bonds — Issuance for refunding obligations.
14-265-107. Bonds — Indebtedness as special obligation — Payment of principal and interest.
14-265-108. Bonds — Statutory mortgage lien — Enforcement by holder of bonds.
14-265-109. Bonds — Default in payment.
14-265-110. Bonds — Tax exemption.
14-265-111. Bonds — Investment of public funds.
14-265-112. [Transferred.]

Cross References. Use of surplus revenues of utilities, § 14-199-101.

Effective Dates. Acts 1970 (Ex. Sess.), No. 31, § 5: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 223, § 6: became law without Governor's signature, Feb. 18, 1975. Emergency clause provided: "It has been found and it is hereby declared that the present interest rate limitation set forth in Act No. 175 of 1961, as amended, restricts severely the construction and operation of hospitals, nursing homes, rest homes and related facilities by municipalities and counties of the State of Arkansas and that the operation of such facilities is hampered by uncertainties as to the meth-

ods whereby property pertaining to the construction, expansion and operation of such facilities may be acquired. The construction, expansion and efficient operation of these medical facilities being essential to the health and welfare of the inhabitants of the State, an emergency is declared to exist, and this Act, being immediately necessary to the preservation of the public peace, health and safety, shall be in force immediately upon its approval."

Acts 1977, No. 445, § 6: became law without Governor's signature, Mar. 16, 1977. Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that in order to insure candor, objectivity and the presentation of all pertinent information sought by committees reviewing the quality of medical and hospital care and thus contribute to the effective functioning of committees striving to determine and improve such care, an absolute privilege of confidentiality should be afforded to data elicited during the course of such inquiries and that the privilege of confidentiality should be provided for as soon as possible. Therefore, an emergency is hereby declared to exist, and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval."

Acts 1977, No. 945, § 4: Apr. 1, 1977. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that agencies of the federal government are in some instances authorized and able to assist in the financing of medical facilities by the acquisition of hospital revenue bonds issued by municipalities and counties on terms permitting a longer payout period than that presently authorized and that it is essential to the continued development of necessary medical facilities in many municipalities and counties that assistance by agencies of the federal government be utilized to the full extent available. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety, shall be in effect upon its approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

RESEARCH REFERENCES

Ark. L. Rev. Comment, Municipal Bonds and Amendment 62: Clearing Up a Serbonian Bog, 39 Ark. L. Rev. 499.

14-265-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "County" means a county of this state, or, where a county is divided into two (2) districts, "county" means the entire county or either district of the county;

(2) "Governing body" means the council, board of directors, or city commission of any municipality;

(3) "Municipality" means a city of the first or second class or an incorporated town;

(4) "Equip" means to install or place on or in any building or structure equipment of any and every kind, whether or not affixed, including, without limiting the generality of the foregoing, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture, furnishings, and personal property of every kind;

(5) "Sell" means to sell for such price, in such manner, and upon such terms as the municipality or county shall determine including, without limiting the generality of the foregoing, private or public sale, and, if public, pursuant to such advertisement as the municipality or county shall determine. "Sell" also means to sell for cash or credit payable in a lump sum or in installments over such period as the municipality or county shall determine and, if on credit, with or without interest and at such rate or rates as the municipality or county shall determine;

(6) "Lease" means to lease for such rentals, for such period or periods, and upon such terms and conditions as the municipality or county shall determine including, without limiting the generality of the foregoing, the granting of purchase options for such prices and upon such terms and conditions as the municipality or county shall determine;

(7) "Facilities" means any real property, personal property, or mixed property of any and every kind that can be used or that will be used for or in the operation of the hospital, nursing home, rest home, or related facilities including, without limiting the generality of the foregoing, rights-of-way, roads, streets, pipes, pipelines, reservoirs, utilities, materials, equipment, fixtures, machinery, furniture, furnishings, instrumentalities, commodities, supplies, and other real, personal, or mixed property of every kind;

(8) "Construct" means to acquire or build, in whole or in part, in such manner and by such method, including contracting therefor, and, if the latter, by negotiation or bidding upon terms and pursuant to advertising, as the municipality or county shall determine to be in the public interest and, under the circumstances existing at the time, to accomplish the purposes of and authorities set forth in this chapter.

History. Acts 1961, No. 175, § 10; 1973, No. 86, § 3; 1975, No. 223, § 3; 1981, No. 425, § 40; A.S.A. 1947, § 19-4722.

14-265-102. Applicability and construction.

(a) This chapter is intended to supplement all constitutional provisions and other acts and, when applicable in accordance with the provisions of this chapter, may be used by any municipality or county as an alternative, notwithstanding any constitutional provisions or any other act authorizing a municipality or county or any commission or agency thereof to issue bonds for any of the purposes provided in this chapter.

(b) This chapter shall be liberally construed to accomplish its purposes and shall be the sole authority required for the accomplishment of its purposes. To that end, it shall not be necessary to comply with

general provisions of other laws dealing with public facilities, their acquisition, construction, leasing, encumbering, or disposition.

History. Acts 1961, No. 175, § 12, as added by Acts 1973, No. 86, § 4; A.S.A. 1947, § 19-4723.

14-265-103. Authority to acquire, own, manage, and sell health facilities.

Any municipality and any county is authorized to acquire, own, construct, reconstruct, extend, equip, improve, maintain, operate, sell, lease, contract concerning, or otherwise deal in or dispose of any land, buildings, improvements, or facilities of any and every nature whatever that can be used for hospitals, nursing homes, rest homes, or related facilities within or near the municipality or county.

History. Acts 1961, No. 175, § 1; 1973, No. 86, § 1; A.S.A. 1947, § 19-4713.

14-265-104. Bonds — Authority to issue.

(a) Municipalities and counties are authorized to use any available revenues for the accomplishment of the purposes set forth in § 14-265-103 and are authorized to issue revenue bonds and to use the proceeds thereof for the accomplishment of the purposes set forth in § 14-265-103 either alone or together with other available funds and revenues.

(b) The amount of bonds issued shall be sufficient to pay all costs and sums required and necessarily incidental to the accomplishment of the specified purposes and to the sale on the best possible basis and issuance of the bonds, including, without limitation, all costs and expenses of issuing the bonds, a reasonable reserve, and an amount covering interest to a date not in excess of six (6) months subsequent to the date of acquisition or the estimated date of completion, whichever is later.

History. Acts 1961, No. 175, § 2; A.S.A. 1947, § 19-4714.

14-265-105. Bonds — Issuance, sale, and execution.

(a)(1) The issuance of revenue bonds shall be by an ordinance of the municipality or an order of the county court, as the case may be.

(2) The bonds shall be coupon bonds payable to bearer but subject to registration as to principal or as to principal and interest.

(3) The bonds may be:

(A) Bonds registered as to principal or as to principal and interest;

(B) Exchangeable for bonds of another denomination; and

(C) Issued in one (1) or more series.

(4) The bonds may bear such date or dates, may mature at such time or times, not exceeding forty (40) years from their respective dates, may

bear interest at such rate or rates, may be in such form, may be executed in such manner, may be payable in such medium of payment and at such place or places, may be subject to such terms of redemption, and may contain such terms, covenants, and conditions as the ordinance or order may provide including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the maintenance and investment of various funds and reserves, the nature and extent of the security, the rights, duties, and obligations of the municipality or county and the trustee for the holders or registered owners of the bonds, and the rights of the holders or registered owners of the bonds.

(5) Priority between and among successive issues may be controlled by the ordinance or order.

(6) The bonds shall have all the qualities of negotiable instruments under the laws of this state, subject to the provisions for registration set forth in this section.

(b)(1) The ordinance or order may provide for the execution by the municipality or county of an indenture which defines the rights of the bondholders and provides for the appointment of a trustee for the bondholders.

(2) The indenture may control the priority between successive issues and may contain any other terms, covenants, and conditions that are deemed desirable including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the maintenance of various funds and reserves, the nature and extent of the security, the rights, duties, and obligations of the municipality or county and the trustee for the holders or registered owners of the bonds, and the rights of the holders or registered owners of the bonds.

(3) It shall not be necessary for the municipality to publish any indenture or any lease or other security agreement or instrument if the ordinance authorizing the indenture or lease or other security agreement or instrument is published as required by the law governing the publication of ordinances of a municipality and the ordinance advises that a copy of the indenture or lease or other security agreement or instrument, as the case may be, is on file in the office of the clerk or recorder of the municipality for inspection by any interested person and a copy of the indenture or lease or other security agreement or instrument, as the case may be, is filed with the clerk or recorder of the municipality.

(c)(1) The bonds may be sold at public or private sale, for such price, including, without limitation, sale at a discount, and in such manner as the municipality or county may determine by ordinance or order.

(2) The bonds may be sold with the privilege of conversion into an issue bearing another rate or rates of interest, upon such terms and conditions as the municipality or county shall specify but, in any event, such that the municipality or county receives no less and pays no more than it would receive and pay if the bonds were not converted; the

conversion shall be subject to the approval of the governing body of the municipality or the county court.

(d)(1) The bonds shall be executed by the mayor and the clerk or recorder of the municipality, or by the county judge and county clerk of the county, as the case may be, and, in case any of the officers whose signatures appear on the bonds or coupons shall cease to be those officers before the delivery of the bonds or coupons, the signatures shall nevertheless be valid and sufficient for all purposes.

(2) The coupons attached to the bonds may be executed by the facsimile signature of the mayor or county judge.

History. Acts 1961, No. 175, § 3; 1970 (Ex. Sess.), No. 31, §§ 1, 2; 1973, No. 86, § 2; 1975, No. 223, §§ 1, 2; 1977, No. 945, § 1, 1981, No. 425, § 40; A.S.A. 1947, § 19-4715.

Cross References. Form of bonds, § 19-9-101.

14-265-106. Bonds — Issuance for refunding obligations.

(a) Revenue bonds may be issued under this chapter for the purpose of refunding any obligations issued under this chapter.

(b)(1) When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations.

(2) If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement thereof.

(c) All bonds issued under this section shall in all respects be authorized, issued, and secured in the manner provided for other bonds issued under this chapter and shall have all the attributes of those bonds.

(d) The ordinance or order under which refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded.

History. Acts 1961, No. 175, § 5; A.S.A. 1947, § 19-4717

14-265-107. Bonds — Indebtedness as special obligation — Payment of principal and interest.

(a)(1) The revenue bonds shall not be general obligations of the municipality or county, but they shall be special obligations. In no event shall the revenue bonds constitute an indebtedness of the municipality or county within the meaning of any constitutional or statutory limitation.

(2) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this chapter and that it does not constitute an indebtedness of the municipality or county within any constitutional or statutory limitation.

(b)(1) The principal of, and interest on, the revenue bonds and paying agent's fees shall be payable in the first instance from gross revenues derived from the lands, buildings, and facilities acquired, constructed, reconstructed, extended, and improved, in whole or in part, with the proceeds of the bonds, and, for that purpose, the municipality or county may pledge all or any part of the gross revenues.

(2) In addition, the municipality or county is authorized to pledge to, and use for, the payment of the principal of and interest on the bonds, and for paying agent's fees, surplus revenues derived from water, sewer, gas, and electric utilities owned by the municipality or county.

(3) As used in this subsection, "surplus revenues" means revenues remaining after adequate provision shall have been made for expenses of operation, maintenance, and depreciation and after all requirements of ordinances, orders, and indentures securing bonds theretofore or thereafter issued to finance the cost of acquiring, constructing, reconstructing, extending, and improving the utilities, have been fully met and complied with.

(c) The municipality or county is also authorized to use, for the payment of the principal of and interest on the bonds and for paying agent's fees, moneys in the general fund of the municipality or county.

History. Acts 1961, No. 175, § 4; A.S.A. 1947, § 19-4716.

14-265-108. Bonds — Statutory mortgage lien — Enforcement by holder of bonds.

(a) Subject to the subsequent provisions of this section, there shall exist a statutory mortgage lien upon the land, buildings, and facilities acquired or constructed, in whole or in part, with the proceeds of the revenue bonds, which shall exist in favor of the holders of the bonds and in favor of the holders of the coupons attached to the bonds.

(b) The land, buildings, and facilities shall remain subject to the statutory mortgage lien until payment in full of the principal of and interest on the revenue bonds.

(c) The nature and extent of the mortgage lien on the land, buildings, and facilities may be controlled by the indenture referred to in § 14-265-105(b), including, without limitation, provisions pertaining to the release of all or part of the land, buildings, and facilities from the lien and the priority of the lien in the event of additional bond issues under this chapter for the purpose of reconstructing, replacing, extending, or improving the same land, buildings, and facilities.

(d) Subject to the restrictions as may be contained in the ordinance, order, or indenture authorizing and securing the bonds, any holder of bonds issued under the provisions of this chapter or of any coupons representing interest accrued thereon may enforce, either at law or in equity, the statutory mortgage lien conferred by this section and may compel, by proper suit, the performance of the duties of the officials of the issuing municipality or county as set forth in this chapter and in

any ordinance, order, or indenture authorizing and securing the revenue bonds.

History. Acts 1961, No. 175, § 6; A.S.A. 1947, § 19-4718.

14-265-109. Bonds — Default in payment.

(a) In the event of a default in the payment of the principal of, or interest on, any revenue bonds issued under this chapter, any court having jurisdiction may appoint a receiver to take charge of the land, buildings, or facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of revenue bonds issued under this chapter, upon which land, buildings, or facilities, or any part thereof, there is a mortgage lien securing the revenue bonds with reference to which there is a default in the payment of principal or interest.

(b) The receiver shall have the power to operate and maintain the land, buildings, or facilities, to charge and collect rates or rents sufficient to provide for the payment of the principal of and interest on the bonds, after providing for the payment of any cost of receivership and operating expenses of the land, buildings, or facilities, and to apply the income and revenues derived from the land, buildings, or facilities in conformity with this chapter and the ordinance, order, or indenture authorizing or securing the bonds.

(c) When the default has been cured, the receivership shall be ended and the properties returned to the municipality or county.

(d) The relief afforded by this section shall be construed to be in addition and supplemental to the remedies that may be afforded the trustee for the bondholders and the bondholders in the ordinance, order, or indenture authorizing or securing the bonds and shall be so granted and administered as to accord full recognition to priority rights of bondholders as to the pledge or revenues from, and mortgage lien on, the land, buildings, or facilities as specified in, and fixed by, the ordinances, orders, or indentures authorizing or securing successive bond issues.

History. Acts 1961, No. 175, § 7; A.S.A. 1947, § 19-4719.

14-265-110. Bonds — Tax exemption.

Bonds issued under the provisions of this chapter shall be exempt from all state, county, and municipal taxes including income and estate taxes.

History. Acts 1961, No. 175, § 8; A.S.A. 1947, § 19-4720.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Ark. Const. Amend. 57, § 1, and § 26-3-302. Arkansas Const. Amend. 57, § 1, provides that the General Assembly may classify intangible personal property for assessment at lower percentages of value

than other property and may exempt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempts all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

14-265-111. Bonds — Investment of public funds.

(a) Any municipality; any board, commission, or other authority duly established by ordinance of any municipality; the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any municipality, or any county; or the board of trustees of any retirement system created by the General Assembly, in its discretion, may invest any of its funds not immediately needed for its purposes in the revenue bonds issued under the provisions of this chapter.

(b) Revenue bonds issued under this chapter shall be eligible to secure the deposit of public funds.

History. Acts 1961, No. 175, § 9; A.S.A. 1947, § 19-4721.

14-265-112. [Transferred.]

Publisher's Notes. Acts 1977, No. 445, § 2, formerly codified as this section, is now codified as § 20-9-308.

CHAPTER 266

MUNICIPAL AMBULANCE LICENSING

SECTION.
14-266-101. Title.
14-266-102. Legislative determination.
14-266-103. Definitions.
14-266-104. Applicability and construction.
14-266-105. Grant of authority.
14-266-106. Authority of EMS Board.
14-266-107. Franchise.
14-266-108. Financing of services and facilities.
14-266-109. Rules, standards, and regulations.
14-266-110. Effect of termination of permit by state.

Effective Dates. Acts 1981 (1st Ex. Sess.), No. 23, § 11: Dec. 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provision of emergency medical services to persons residing in First Class cities can best be regulated on the local level by the governing bodies of First Class cities, and that this Act is immediately necessary to grant such authority to First Class cities. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 196, § 6: Feb. 24, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present Municipal Ambulance Licensing Law applies only to first class cities with a population in excess of 35,000 persons; that all first class cities should be covered by the Municipal Am-

bulance Licensing Law; that this Act removes the inequity by amending the Municipal Ambulance Licensing Law to be applicable to all first class cities of this State; that until this Act becomes effective many first class cities will be unable to take advantage of the Municipal Ambulance Licensing Law; and therefore this Act should be given immediate effect. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

14-266-101. Title.

This chapter shall be known as the "Municipal Ambulance Licensing Act."

History. Acts 1981 (Ex. Sess.), No. 23, § 1; A.S.A. 1947, § 19-5901.

Publisher's Notes. Sections 7, 9, 8(a), and 8(b) of Acts 1981 (Ex. Sess.), No. 23, are codified as §§ 14-43-601, 14-54-704, 14-137-103 and 14-137-106, respectively.

Acts 1985, No. 1001, § 8, provided that nothing in the act repealed Acts 1981 (Ex. Sess.), No. 23, by implication or otherwise.

14-266-102. Legislative determination.

(a)(1) It is legislatively determined that it may be desirable for cities of the first class and second class within this state to be authorized and empowered to own, operate, permit, control, manage, franchise, license, and regulate emergency medical services, emergency medical technicians, emergency and nonemergency ambulances, ambulance companies, their relative properties, facilities, equipment, personnel, and any and all aspects attendant to providing emergency medical services and ambulance operations as the cities may deem proper to provide for the health, safety, and welfare of their citizens.

(2) In addition, it is legislatively determined that, in order to accomplish the purposes enumerated in this chapter, it may also be necessary for the cities, in addition to all other powers granted in this chapter, to enact and establish standards, rules, and regulations that are equal to, or greater than, the minimum standards, rules, and regulations established by the state, pursuant to §§ 20-13-201 — 20-13-209 and 20-13-211, concerning emergency medical services, emergency medical technicians, ambulances, ambulance companies, their relative properties, facilities, equipment, personnel, and any and all aspects attendant to providing emergency medical services and ambulance operations within the boundaries of their respective cities.

(3) Further, it is the legislative intent that the standards, rules, and regulations shall not be less than those established by the state.

(b)(1) It is further legislatively determined that emergency medical services and ambulance operations, when subjected to competitive practices of multiple companies simultaneously serving the same city, operate under precarious financial conditions and that this type of competition is harmful to the health, safety, and welfare of residents of the state.

(2) However, it is also legislatively determined that periodic competition among companies for the right to provide ambulance services offers a safe and effective means of encouraging fair and equitable private-sector participation.

(3) Therefore, in order to ensure the availability of state-of-the-art advanced life-support systems and ambulance systems, the General Assembly specifically delegates and grants to cities of the first class and second class the right and power to contract exclusively or otherwise, using competitive procurement methods, for the provision of emergency medical services and ambulance services for the city and to provide continuing supervision of those services.

(c) The General Assembly has determined that this chapter grants cities of the first class and second class broad authority regarding emergency and nonemergency medical services. The General Assembly has further determined that cities of the first class and second class should be allowed to enter into agreements with other cities within the county where they are located or with the county wherein they are located regarding emergency and nonemergency medical services. Therefore, cities of the first class and second class may enter into interlocal agreements with other cities located within the county wherein the city of the first class or second class is located, or with the county wherein the city of the first class or second class is located, and thereby exercise as a cooperative governmental unit all power granted to the city of the first class or second class by this chapter.

History. Acts 1981 (Ex. Sess.), No. 23, § 2; A.S.A. 1947, § 19-5902; Acts 1987, No. 407, § 3; 1989, No. 196, § 1.

14-266-103. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Emergency medical services" means the transportation and emergency medical technician care provided the critically ill or injured prior to arrival at a medical facility by a certified emergency medical technician (EMT) and within a medical facility subject to the individual approval of the medical staff and governing board of that facility.

(2) "Nonemergency ambulance services" means the transport in a motor vehicle to or from medical facilities including, but not limited to, hospitals, nursing homes, physicians' offices, and other health care facilities of persons who are infirm or injured and who are transported in a reclining position; however, not-for-hire on a fee-for-service basis transportation furnished by licensed hospitals and licensed nursing homes to their own admitted patients or residents and individual not-for-hire transportation shall be excluded.

History. Acts 1981 (Ex. Sess.), No. 23, § 3; A.S.A. 1947, § 19-5903.

14-266-104. Applicability and construction.

(a) Nothing in this chapter shall apply to nonprofit or hospital-based ambulance services operated on November 1, 1981, by a nonprofit organization or an Arkansas hospital licensed by the Department of Health.

(b) Nothing in this chapter shall be construed as expanding the authority of emergency medical technicians or other ambulance personnel beyond the authority existing under applicable Arkansas law.

(c) Nothing in this chapter shall be construed to give cities the power to regulate, in any way, regional or state emergency medical service communication facilities.

History. Acts 1981 (Ex. Sess.), No. 23, § 3; A.S.A. 1947, § 19-5903.

14-266-105. Grant of authority.

(a) Cities of the first class and second class are authorized:

(1) To enact and establish standards, rules, and regulations which are equal to or greater than those established by the state concerning emergency medical services, as defined in this chapter, and emergency medical technicians, emergency and nonemergency ambulances, and ambulance companies, as defined under §§ 20-13-201 — 20-13-209 and 20-13-211; however, the standards, rules, and regulations shall not be less than those established by this state;

(2) To establish, own, operate, regulate, control, manage, permit, franchise, license, and contract with, exclusively or otherwise, emergency medical services, ambulances, ambulance companies, and their relative properties, facilities, equipment, personnel, and any and all aspects attendant to emergency medical services and ambulance operations, whether municipally owned or otherwise, including, but not limited to, rates, fees, charges, or other assessments as the cities consider proper to provide for the health, safety, and welfare of their citizens;

(3) To establish an Emergency Medical Health Care Facilities Board, hereinafter called "Emergency Medical Services Board" or "EMS Board", under §§ 14-137-101 — 14-137-123, and to exercise all the powers conferred in this chapter and the power conferred under §§ 14-137-101 — 14-137-123, either alone or in conjunction with the EMS Board;

(4) To provide emergency medical services to its residents and to the residents of the county, surrounding counties, and municipalities within those counties, but only if the governing bodies of the counties and municipalities request and authorize the service under §§ 14-14-101, 14-14-103 — 14-14-110 or §§ 25-20-101 — 25-20-108;

(5) To regulate all intracity patient transports and intercity and intracounty patient transports originating from within the regulating city. However, this chapter shall not restrict or allow local regulation of not-for-hire on a fee-for-service basis transportation, any intercounty

patient transports, or intercity patient transports to or from medical facilities within the regulating city originating from anywhere outside the regulating city.

(b)(1) A city regulating ambulance companies which contracts with private ambulance companies under this chapter shall permit those companies to offer ambulance services outside its boundaries.

(2) A city regulating ambulance services, which municipally owns or operates those services, shall provide ambulance services to those surrounding areas whose governing bodies request and authorize those services but only if mutually agreeable contracts can be reached to provide those services.

(3) All direct and indirect costs of extending those services shall be borne entirely by patient user fees or subsidies provided by the patient, municipality, or county to whom those services are rendered.

(4) In no event shall the city extending ambulance services beyond its boundaries be required in any manner to subsidize or otherwise extend financial support to render those services.

(c) The city shall have the same authority to regulate nonemergency ambulance services.

History. Acts 1981 (Ex. Sess.), No. 23, § 3; A.S.A. 1947, § 19-5903; Acts 1989, No. 196, § 2.

14-266-106. Authority of EMS Board.

(a) In addition to the powers granted pursuant to §§ 14-137-101 — 14-137-123, the EMS Board, unless limited by the governing body of the city, shall have unlimited authority, by negotiation or by bidding, to own, acquire, lease, construct, contract, operate, manage, improve, extend, maintain, control, permit, license, supervise, and regulate emergency medical services, ambulances, ambulance companies, their related properties, facilities, equipment, personnel, and any and all aspects attendant to providing emergency medical services and ambulance operations in the city. This may include, but not be limited to, the right to employ, regulate, license, and remove any and all personnel, assistants, and employees of whatsoever nature, kind, or character and to regulate and fix their compensation.

(b) The EMS Board may also appoint an executive director who shall not be a member of the EMS Board and who shall serve at the pleasure of the EMS Board and receive such compensation as shall be fixed by the EMS Board.

(c) The members of the EMS Board shall receive no compensation but shall be entitled to reimbursement of expenses incurred in the performance of their duties.

History. Acts 1981 (Ex. Sess.), No. 23, § 5; A.S.A. 1947, § 19-5905.

14-266-107. Franchise.

(a) Cities of the first class and cities of the second class, whether or not they establish an EMS Board as provided in this chapter, shall have and possess all the powers that an EMS Board is granted in this chapter and may exercise those powers alone or in conjunction with an EMS Board.

(b) The cities shall also have the right and power to franchise, exclusively or otherwise, emergency medical services, ambulances, ambulance companies, their related properties, facilities, equipment, personnel, and any and all aspects attendant to providing emergency medical services and ambulance operations within the cities, whether or not owned and operated by the city.

(c) In the event an exclusive franchise is issued, the process employed in the issuance shall provide periodic opportunity for competitive solicitation of ambulance franchise applications.

History. Acts 1981 (Ex. Sess.), No. 23, § 6; A.S.A. 1947, § 19-5906; Acts 1989, No. 196, § 3.

14-266-108. Financing of services and facilities.

(a) The emergency medical services and emergency medical health care facilities anticipated by this chapter may be financed by service charges and bonds or by subsidy by some governmental agency.

(b)(1) The bonds, which shall be issued under §§ 14-137-101 — 14-137-123, may be financed by service charges and rates levied by ordinance.

(2) The service charges and rates shall be assessed and collected on a per unit of service basis as determined by the EMS Board.

History. Acts 1981 (Ex. Sess.), No. 23, § 4; A.S.A. 1947, § 19-5904.

14-266-109. Rules, standards, and regulations.

(a) All rules, standards, and regulations concerning clinical medical standards, including, but not limited to, equipment standards, personnel standards, and training standards shall be submitted to the State Board of Health with advice from the Governor's Advisory Council for EMS through the Department of Health for review and approval before becoming effective.

(b)(1) Approval shall not be required if the clinical medical standards are developed and approved by an organization of physicians licensed under the Arkansas Medical Practices Act, and authorized by local ordinance adopted pursuant to this chapter to establish clinical medical standards which are not in conflict with the Arkansas Medical Practices Act, and are not less than those established by this state.

(2) In this instance, the clinical medical standards so developed and approved shall be submitted to the State Board of Health with advice

from the Governor's Advisory Council for EMS through the Department of Health for review and comment only.

History. Acts 1981 (Ex. Sess.), No. 23, § 3; A.S.A. 1947, § 19-5903.

Publisher's Notes. The Arkansas Medical Practices Act is codified as §§ 17-95-201 — 17-95-206, 17-95-301 et seq., and 17-95-401 et seq.

14-266-110. Effect of termination of permit by state.

The revocation, suspension, or expiration of any permit, license, or certification issued by the Department of Health to an ambulance company or ambulance personnel shall cause an automatic revocation of the holder's permit, license, certification, or franchise granted under this chapter.

History. Acts 1981 (Ex. Sess.), No. 23, § 3; A.S.A. 1947, § 19-5903.

CHAPTER 267

POLLUTION CONTROL FACILITIES

SECTION.
14-267-101. Legislative determination.
14-267-102. Definitions.
14-267-103. Construction.
14-267-104. Authority.
14-267-105. Agreements with federal or state agencies.
14-267-106. Bonds — Authority to issue.
14-267-107. Bonds — Issuance, sale, and execution.
14-267-108. Bonds — Issuance for refunding of obligations.
14-267-109. Bonds — Indebtedness as special obligation — Payment of principal and interest.
14-267-110. Bonds — Mortgage lien.
14-267-111. Bonds — Default in payment.
14-267-112. Bonds — Tax exemption.
14-267-113. Bonds — Investment of public funds.

Publisher's Notes. Acts 1985, No. 945 confirmed and continued the authority of municipalities and counties to issue pollution control revenue bonds pursuant to Acts 1973, No. 247

Cross References. Local Government Bond Act of 1985, § 14-164-301 et seq.

Effective Dates. Acts 1973, No. 247, § 15: Mar. 7, 1973. Emergency clause provided: "It is hereby found and declared that pollution control facilities are essential to the continued health, welfare, safety, economic growth and development of the State of Arkansas and its people and that the availability of permanent financing for pollution control facilities on favorable terms is necessary. This Act is immediately necessary in order that such facilities may be so financed and accomplished and the resulting public benefits realized. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 153, § 6: Feb. 12, 1975. Emergency clause provided: "It is hereby found and declared that it is essential and necessary that additional means be provided to assist in the financing of pollution control facilities and that a greater degree of flexibility be provided with respect to the security for such financing by municipalities and counties. This Act is immediately necessary in order to facilitate the financing and accomplishment of pollution control facilities and the realization of the public benefits resulting therefrom.

Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 5, § 6: Jan. 28, 1981. Emergency clause provided: "It is found and declared that the financing of the public improvements to which this Act pertains is not feasible under existing limitations as to maximum interest rates and minimum sale prices, and that these public improvements are essential to the continued development of this State and the continued improvement of the economic conditions of her people. These public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 504, § 5: Mar. 16, 1981. Emergency clause provided: "It is found and declared that the financing of the pollution control facilities to which this Act pertains is not feasible under existing limitations as to maximum interest rates and that procedures for issuing revenue bonds must be clarified immediately in order to permit the continued financing of such facilities. This Act is immediately necessary in order to facilitate the financing and accomplishment of pollution control facilities and the realization of the public benefit resulting therefrom. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 453, § 3: Mar. 20, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that pollution control facilities are essential to the continued health, welfare, safety, economic growth and development of the State of Arkansas and its people and that the availability of permanent financing for pollution control facilities on favorable terms is necessary; and that this Act is immediately necessary in order that such facilities may be so financed and accomplished and the resulting public benefits realized. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. When statute of limitations begins to run as to cause of action for nuisance based on air pollution. 19 ALR 4th 456.

Validity, construction, and effect of requirement under state statute or local ordinance giving local or locally qualified contractors a percentage preference in determining lowest bid. 89 ALR 4th 587.

UALR L.J. Legislative Survey, Bonds, 8 UALR L.J. 551.

14-267-101. Legislative determination.

(a) Pollution control facilities are legislatively determined to be essential to the securing and developing of industry and essential to the health, safety, and physical and economic welfare of the people of this state.

(b) The availability of permanent financing for pollution control facilities on favorable terms is necessary in the case of new and existing projects so that the people may obtain the benefits of additional jobs and payrolls, in the case of new projects, and may retain and, where applicable, expand jobs and payrolls which might otherwise be lost, in the case of existing projects. This chapter is in implementation of Arkansas Constitution, Amendment 49 [repealed], and is necessary for

the full accomplishment and realization of the public purposes contemplated by the people in adopting Arkansas Constitution, Amendment 49 [repealed].

History. Acts 1973, No. 247, § 1; A.S.A. 1947, § 13-1901.

A.C.R.C. Notes. It is questionable whether Ark. Const. Amend. 49 is repealed in whole or whether only those provisions that conflict with Ark. Const. Amend. 62 are repealed by Ark. Const. Amend. 62.

14-267-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Acquire" means to obtain by gift, purchase, or other arrangement any pollution control facilities, including, without limitation, those theretofore existing, those theretofore constructed and equipped, those theretofore partially constructed and equipped, and those being constructed and equipped at the time of acquisition, for such consideration and pursuant to such terms and conditions as the governing body of the municipality or the county court shall determine;

(2) "Construct" means to acquire or build extensions, in whole or in part, in such manner and by such method including contracting therefor and, if the latter, by negotiation or bidding upon such terms and pursuant to such advertising as the municipality or county shall determine to be in the public interest and necessary under the circumstances existing at the time to accomplish the purposes of, and authorities set forth in, this chapter;

(3) "Equip" means to install or place in or on any building or structure equipment, of any and every kind, whether or not affixed, including, without limitation, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture, furnishings, and personal property of every kind;

(4) "Facilities" or "pollution control facilities" means any real property, personal property, or mixed property of any and every kind that can be used or that will be useful in pollution control of sewerage, solid waste, air, water, or any other type whatever, or any combination thereof, including, without limitation, rights-of-way, roads, streets, pipes, pipelines, reservoirs, utilities, materials, equipment, fixtures, machinery, furniture, furnishings, instrumentalities, buildings, improvements, and other real, personal, or mixed property of every kind;

(5) "Governing body" means the council, board of directors, or city commission of any municipality;

(6) "Lease" means to lease for such rentals, for such period or periods, and upon such terms and conditions as the municipality or county shall determine and the granting of such extension and purchase options for such prices and upon such terms and conditions as the municipality or county shall determine;

(7) "Municipality" means a city of the first or second class or an incorporated town;

(8) "Sell" means to sell for such price, in such manner, and upon such terms as the municipality or county shall determine including, without

limitation, public or private sale and, if public, pursuant to such advertisement as the municipality or county shall determine. "Sell" also means to sell for cash or credit, payable in a lump sum or in installments over such period as the municipality or county shall determine and, if on credit, with or without interest and at such rate or rates as the municipality or county shall determine;

(9) "Loan" means to loan for such period or periods, at such rate or rates of interest, in such manner, and upon such terms and conditions as the municipality or county shall determine including, without limitation, a secured or unsecured loan.

History. Acts 1973, No. 247, § 12; 1975, No. 153, § 3; 1981, No. 504, § 2; A.S.A. 1947, § 13-1912.

14-267-103. Construction.

(a) This chapter is to be liberally construed to accomplish the purposes hereof and shall be the sole act and authority necessary to be complied with. To that end, this chapter and the authority conferred by it shall be supplemental to all other authority set forth in any other act authorizing or dealing with industrial or pollution control facilities and their financing.

(b) The pollution control facilities authorized by this chapter may pertain to any aspect of the securing and developing of industry including those directly involved and those indirectly involved therewith, such as, without limiting the generality of the foregoing, utility facilities and services, whether rendered by political subdivisions or private persons, corporations, or organizations.

(c) Nothing in this chapter shall be construed to authorize any municipality or county to sell bonds and use the proceeds of that sale to condemn a utility plant or distribution system owned or operated by a regulated public utility.

History. Acts 1973, No. 247, § 13; A.S.A. 1947, § 13-1913.

14-267-104. Authority.

Any municipality and any county in this state is authorized to own, acquire, contruct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in or dispose of, or make loans to finance the acquisition, construction, reconstruction, extension, equipment, or improvement of pollution control facilities for the disposal or control of sewerage, solid waste, water pollution, air pollution, or any combination thereof; any such undertaking, or combination of such undertakings, shall be sometimes referred to in this chapter as a "pollution control project."

History. Acts 1973, No. 247, § 2; 1975, No. 153, § 1, A.S.A. 1947, § 13-1902.

14-267-105. Agreements with federal or state agencies.

Municipalities and counties are authorized to enter into and carry out appropriate agreements with any agency or political subdivision of the United States of America or of the State of Arkansas pertaining to the accomplishment of the purposes authorized by this chapter including, without limitation, loan agreements for the borrowing of money and agreements pertaining to grants.

History. Acts 1973, No. 247, § 11, A.S.A. 1947, § 13-1911.

14-267-106. Bonds — Authority to issue.

(a) Municipalities and counties are authorized to use any available revenues for the accomplishment of pollution control projects, either alone or together with other available funds and revenues. They may issue bonds, as authorized in this chapter, for the accomplishment of pollution control projects, either alone or together with other available funds and revenues.

(b) Bonds may be issued in such principal amount as shall be sufficient to pay the cost of accomplishing the pollution control project involved, the cost of issuing bonds, the amount necessary for a reserve, if deemed desirable, the amount necessary to provide for debt service on the bonds until revenues for the payment thereof are available, and any other costs and expenditures of whatever nature incidental to the accomplishment of the pollution control project involved.

History. Acts 1973, No. 247, § 3; A.S.A. 1947, § 13-1903.

14-267-107. Bonds — Issuance, sale, and execution.

(a)(1) The issuance of bonds shall be by ordinance of the municipality or by order of the county court.

(2) The bonds may be coupon bonds payable to bearer, but subject to registration as to principal only or as to principal and interest; may be exchangeable for bonds of another denomination; may be in such form and denominations; may be made payable at such places within or without the state; may be issued in one (1) or more series; may bear such date or dates; may mature at such time or times, not exceeding forty (40) years from their respective dates; may bear interest at such rate or rates; may be payable in such medium of payment; may be subject to such terms of redemption; and may contain such terms, covenants, and conditions as the ordinance or order authorizing their issuance may provide including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the maintenance of various funds and

reserves, the nature and extent of the security and pledging of revenues, the rights, duties, and obligations of the municipality or county and the trustee for the holders and registered owners of the bonds, and the rights of the holders and registered owners of the bonds.

(3) There may be successive bond issues for the purpose of financing the same pollution control project, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping pollution control projects already in existence, whether or not originally financed by bonds issued under this chapter, with each successive issue to be authorized as provided by this chapter.

(4) Priority between and among issues and successive issues as to security of the pledge of revenues and lien on the pollution control project facilities involved may be controlled by the ordinance or order authorizing the issuance of bonds under this chapter.

(5) Subject to the provisions of this subsection pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas.

(b)(1) The ordinance or order authorizing the bonds may provide for the execution by the municipality or county of an indenture which defines the rights of the holders and registered owners of the bonds and which provides for the appointment of a trustee for the holders and registered owners of the bonds.

(2) The indenture may control the priority between successive issues and may contain any other terms, covenants, and conditions that are deemed desirable including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the maintaining of rates and charges, the collection and disposition of revenues, the maintenance of various funds and reserves, the nature and extent of the security and pledging of revenues, the rights, duties, and obligations of the municipality and the trustee, and the rights of the holders and registered owners of the bonds.

(3) It shall not be necessary for the municipality to publish any indenture, lease, or other agreement if the ordinance authorizing an indenture, lease, or other agreement is published as required by the law governing the publication of ordinances of a municipality; if the ordinance advises that a copy of the indenture, lease, or other agreement, as the case may be, is on file in the office of the clerk or recorder of the municipality for inspection by any interested person; and if the copy of the indenture, lease, or other agreement, as the case may be, is actually filed with the clerk or recorder of the municipality.

(c) The bonds may be sold for such price, including, without limitation, sale at a discount, and in such manner as the municipality or county may determine by ordinance or county court order.

(d)(1) The bonds shall be executed by the mayor and the city clerk or recorder of the municipality or the county judge and county clerk of the county, as the case may be, and in case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers

before the delivery of the bonds or coupons, the signatures shall, nevertheless, be valid and sufficient for all purposes.

(2) One (1) signature may be facsimile, but one (1) must be manual.

(3) The coupons attached to the bonds may be executed by the facsimile signature of the mayor of the municipality or the county judge of the county.

History. Acts 1973, No. 247, § 4, 1981, No. 5, §§ 1-3; 1981, No. 504, § 1, A.S.A. 1947, § 13-1904.

14-267-108. Bonds — Issuance for refunding of obligations.

(a) Bonds may be issued for the purpose of refunding any obligations issued under this chapter.

(b) The refunding bonds may be combined with bonds issued under the provisions of § 14-267-107 into a single issue.

(c)(1) When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations.

(2) If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement thereof.

(d) All bonds issued under this section shall, in all respects, be authorized, issued, and secured in the manner provided for other bonds issued under this chapter and shall have all the attributes of those bonds.

(e) The ordinance or order under which chapter refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby.

History. Acts 1973, No. 247, § 6; A.S.A. 1947, § 13-1906.

14-267-109. Bonds — Indebtedness as special obligation — Payment of principal and interest.

(a) The bonds issued under this chapter shall not be general obligations of the municipality or county but shall be special obligations. In no event shall the bonds constitute an indebtedness of the municipality or county within the meaning of any constitutional or statutory limitation.

(b) It shall be plainly stated on the face of each bond that the same has been issued under the provisions of this chapter, and that it does not constitute an indebtedness of the municipality or county within any constitutional or statutory limitation.

(c) The principal of and interest on the bonds shall be secured by a pledge of, and shall be payable from, revenues derived from the pollution control project acquired, constructed, reconstructed, extended, or improved, in whole or in part, with the proceeds of the bonds.

(d) In addition, the municipality or county is authorized to pledge to and use for the payment of the principal of and interest on the bonds, together with other expenses in connection therewith, surplus revenues derived from water, sewer, gas, and electric utilities owned by the municipality or county.

(e) Surplus revenues, as used in this section, are defined to mean revenues remaining after adequate provision shall have been made for expenses of operation, maintenance, and depreciation and all requirements of ordinances, orders, or indentures securing bonds, theretofore and thereafter issued to finance the cost of acquiring, constructing, reconstructing, extending, or improving the utilities, have been fully met and complied with.

History. Acts 1973, No. 247, § 5; 1985, No. 453, § 1; A.S.A. 1947, § 13-1905.

14-267-110. Bonds — Mortgage lien.

(a) The ordinance, order, or indenture referred to in § 14-267-107 may, but need not, impose a foreclosable mortgage lien upon the land, buildings, and facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of bonds issued under this chapter. The nature and extent of the mortgage lien may be controlled by the ordinance, order, or indenture, including, without limitation, provisions pertaining to the release of all or part of the land, buildings, and facilities from the mortgage lien and the priority of the mortgage lien in the event of successive bond issues, as authorized by § 14-267-107.

(b) The ordinance, order, or indenture authorizing or securing the bonds may authorize any holder or registered owner of bonds issued under the provisions of this chapter, or a trustee on behalf of all holders and registered owners, either at law or in equity, to enforce the mortgage lien and, by proper suit, compel the performance of the duties of the officials of the issuing municipality or county as set forth in this chapter and in the ordinance, order, or indenture authorizing or securing the bonds.

(c) References in this chapter to "mortgage lien" shall include a security interest in any personal property embodied in a pollution control project acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of bonds issued under this chapter.

History. Acts 1973, No. 247, § 7; 1975, No. 153, § 2; A.S.A. 1947, § 13-1907.

14-267-111. Bonds — Default in payment.

(a) In the event of a default in the payment of the principal of or interest on any bonds issued under this chapter, any court having jurisdiction may appoint a receiver to take charge of the land, buildings, or facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of bonds issued under this chapter, upon which land, buildings, or facilities, or any part thereof, there is a mortgage lien securing the bonds with reference to which there is a default in the payment of principal or interest.

(b) The receiver shall have the power to operate and maintain the land, buildings, or facilities, to charge and collect rates or rents sufficient to provide for the payment of the principal of and interest on the bonds after providing for the payment of all costs of receivership and operating expenses of the land, buildings, or facilities and to apply the income and revenues derived from the land, buildings, or facilities in conformity with this chapter and the ordinance, order, or indenture authorizing or securing the bonds.

(c) When the default has been cured, the receivership shall be ended and the properties returned to the municipality or county.

(d) The relief afforded by this section shall be construed to be in addition and supplemental to the remedies that may be afforded to the trustee for the holders and registered owners of the bonds and the holders and registered owners of the bonds in the ordinance or indenture authorizing or securing the bonds and shall be so granted and administered as to accord full recognition to priority rights of holders and registered owners of the bonds as to the pledge of revenues from, and the mortgage lien on, the land, buildings, or facilities as specified in, and fixed by, the ordinance, order, or indenture authorizing or securing successive bond issues.

History. Acts 1973, No. 247, § 8; A.S.A. 1947, § 13-1908.

14-267-112. Bonds — Tax exemption.

Bonds issued under this chapter shall be exempt from all state, county, and municipal taxes, including income and inheritance taxes.

History. Acts 1973, No. 247, § 9; A.S.A. 1947, § 13-1909.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Ark. Const. Amend. 57, § 1 and § 26-3-302. Arkansas Const. Amend. 57, § 1 provides that the General Assembly may classify intangible personal property for assessment at lower percentages of value than other property and may exempt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempts all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

14-267-113. Bonds — Investment of public funds.

(a) Any municipality; any board, commission, or other authority duly established by ordinance of any municipality; the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any municipality; or the board of trustees of any retirement system created by the General Assembly, may, in its discretion, invest any of its funds not immediately needed for its purposes in bonds issued under the provisions of this chapter.

(b) Bonds issued under the provisions of this chapter shall be eligible to secure the deposit of public funds.

History. Acts 1973, No. 247, § 10; A.S.A. 1947, § 13-1910.

CHAPTER 268

FLOOD LOSS PREVENTION

SECTION.
14-268-101. Legislative determination.
14-268-102. Definition.
14-268-103. Penalty.
14-268-104. Authority to adopt measures.
14-268-105. Public nuisance — Injunction or abatement.

RESEARCH REFERENCES

ALR. Local use zoning of wetlands or flood plain as taking without compensation. 19 ALR 4th 756.

Liability for diversion of surface water by raising surface level of land. 88 ALR 4th 891.

14-268-101. Legislative determination.

It is found and declared:

(1) That there are communities and areas in this state which have suffered from, and are threatened by, floods and the incidents and hazards of flooding;

(2) That flooding in the areas causes destruction of life and property, contributes to the spread of disaster-related diseases, and constitutes a hindrance to the economic development of this state and to the health, safety, and welfare of the residents of this state;

(3) That flood hazards in these flood-prone areas impair their economy and tax revenues;

(4) That insurance with federal reinsurance or other federal assistance will not be available to property owners in these communities unless adequate land use and control measures, consistent with federal criteria, are adopted by the communities prior to June 30, 1970;

(5) That it is the policy of this state to encourage and support all appropriate actions to prevent and lessen these flood hazards and losses;

(6) That it is necessary to adopt state and local measures which, to the maximum extent feasible, will:

(A) Discourage the development of land by improvements which are exposed to flood damage;

(B) Guide the development of proposed construction away from locations which are threatened by flood hazards;

(C) Assist in reducing damage caused by floods; and

(D) Otherwise improve long-range land management in, and use of, flood-prone areas; and

(7) That the enactment of these measures by cities, towns, counties, or the state constitutes a public purpose necessary to the protection and promotion of the economic development of this state and to the health, safety, and welfare of the residents of this state.

History. Acts 1969, No. 629, § 1; A.S.A. 1947, § 21-1901.

14-268-102. Definition.

As used in this chapter, unless the context otherwise requires, "flood-prone areas" means areas that are subject to, or are exposed to, flooding and flood damage.

History. Acts 1969, No. 629, § 2; A.S.A. 1947, § 21-1902.

14-268-103. Penalty.

Any person or corporation who violates any measure adopted under this chapter may be fined not more than one hundred dollars ($100) for each offense. Each day during which a violation exists is a separate offense.

History. Acts 1969, No. 629, § 4; A.S.A. 1947, § 21-1904.

14-268-104. Authority to adopt measures.

(a) In addition to all other powers, and notwithstanding any provision of any other law, each city, town, or county in this state is authorized to enact, adopt, and enforce ordinances, building or zoning codes, or other appropriate measures regulating, restricting, or controlling the management and use of land, structures, and other developments in flood-prone areas.

(b) The measures, in addition to all other matters, may:

(1) Restrict the development and use of land which is exposed to flood damage;

(2) To the extent possible, guide the development of proposed construction away from locations threatened by flood hazards;

(3) Prescribe assistance in reducing flood damage;

(4) Require flood-proofing of structures which are permitted to remain in, or are to be constructed in, flood-prone areas;

(5) Prescribe regulation of the types, purposes, and uses of structures, buildings, developments, or fills permitted to be erected or improved in flood-prone areas;

(6) Require drainage and such other action as is feasible to minimize flooding; and

(7) Assure the adequacy of sewerage and water systems that may be affected by flooding.

History. Acts 1969, No. 629, § 2; A.S.A. 1947, § 21-1902.

CASE NOTES

Municipal Levee.

Where the city's proposed levee would not block a natural watercourse, the increased water elevation on the plaintiffs' properties caused by the proposed levee would be de minimis, and where the city had sufficient funds to compensate the plaintiffs for any damage to their property and to maintain the levee, construction of the levee was not enjoined. Scroggin v. City of Grubbs, 318 Ark. 648, 887 S.W.2d 283 (1994).

14-268-105. Public nuisance — Injunction or abatement.

Every structure, building, fill, or development placed or maintained within any flood-prone area in violation of measures enacted under the authority of this chapter is a public nuisance. The creation of any of these may be enjoined and the maintenance thereof may be abated by action or suit of any city, town, or county, the state, or any citizen of this state.

History. Acts 1969, No. 629, § 4; A.S.A. 1947, § 21-1904.

CHAPTER 269

PARKS AND RECREATIONAL FACILITIES

SUBCHAPTER.

1. Acquisition, Construction, and Maintenance of Recreational Facilities.
2. Operation and Management of Parks.
3. Operation and Management of Parks and Recreation Programs.

Cross References. Public recreation and playgrounds, § 14-54-1301 et seq.

RESEARCH REFERENCES

ALR. Liability of local government entity for injury resulting from use of outdoor playground equipment at municipally-owned park or recreation area. 73 ALR 4th 496.

Products liability, general recreational

equipment, 77 ALR4th 1121.

Am. Jur. 59 Am. Jur. 2d, Parks, §§ 15 et seq., 24.

C.J.S. 62 C.J.S., Mun. Corp., §§ 645-650.

63 C.J.S., Mun. Corp., § 1057.

64 C.J.S., Mun. Corp., §§ 1818-1823.

Subchapter 1 — Acquisition, Construction, and Maintenance of Recreational Facilities

SECTION.
14-269-101. Definitions.
14-269-102. Construction.
14-269-103. General authority — Agreements with federal agencies — Condemnation proceedings.
14-269-104. Commission.
14-269-105. Bonds — Authority to issue.
14-269-106. Bonds — Issuance, sale, and execution.
14-269-107. Bonds — Issuance for refunding of obligations.
14-269-108. Bonds — Indebtedness as special obligation — Payment of principal and interest.
14-269-109. Bonds — Mortgage lien.
14-269-110. Bonds — Default in payment.
14-269-111. Bonds — Tax exemption.
14-269-112. Bonds — Investment of public funds.

Cross References. Local Government Bond Act of 1985, § 14-164-301 et seq.

Effective Dates. Acts 1965, No. 486, § 17: approved Mar. 20, 1965. Emergency clause provided: "It is hereby found and declared that municipalities in this State do not have adequate programs for the developing and providing of public parks and facilities and that on account of such inadequate programs the municipalities have been unable to provide its inhabitants with necessary park and other facilities and have not realized the benefits which will flow from the stimulated economic growth resulting from such adequate programs and that unless such programs are made available, municipalities and the inhabitants thereof will continue to be penalized. The above set forth conditions can be alleviated by the authority set forth in this Act. An emergency, therefore, is declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after its passage."

Acts 1970 (Ex. Sess.), No. 57, § 5: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic condition of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this state and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this act. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the pub-

lic peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

RESEARCH REFERENCES

Ark. L. Rev. Comment, Municipal Bonds and Amendment 62: Clearing Up a Serbonian Bog, 39 Ark. L. Rev. 499.

14-269-101. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Governing body" means the council, board of directors, or city commission of any municipality;

(2) "Municipality" means a city of the first or second class or an incorporated town;

(3) "Equip" means to install or place in or on any building or structure, equipment of any and every kind, whether or not affixed, including, without limitation, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture, furnishings, and personal property of every kind.

(4) "Sell" means to sell for such price, in such manner, and upon such terms as the municipality shall determine including, without limitation, public or private sale and, if public pursuant to such advertisement as the municipality shall determine. "Sell" also means to sell for cash or credit, payable in a lump sum or in installments over such period as the municipality shall determine, and if on credit, with or without interest and at such rate or rates as the municipality shall determine;

(5) "Lease" means to lease for such rentals, for such period or periods and upon such terms and conditions as the municipality shall determine including, without limitation, the granting of such renewal or extension options for such rentals, for such period or periods and upon such terms and conditions as the municipality shall determine and the granting of such purchase options for such prices and upon such terms and conditions as the municipality shall determine;

(6) "Facilities" means any real, personal, or mixed property of any and every kind that can be used, or that will be useful, in developing and providing public parks and facilities under this subchapter, including, without limitation, rights-of-way, roads, streets, pipes, pipelines, reservoirs, utilities, materials, equipment, fixtures, machinery, furni-

ture, furnishings, instrumentalities, and other real, personal, or mixed property of every kind.

History. Acts 1965, No. 486, § 12; 1981, No. 425, § 6; A.S.A. 1947, § 19-3642.

14-269-102. Construction.

(a) This subchapter shall be liberally construed to accomplish its purposes.

(b) Nothing in this subchapter shall be construed to authorize any municipality to issue or sell revenue bonds, or use the proceeds of the bonds, to purchase or condemn a utility plant or distribution system owned or operated by a regulated public utility.

History. Acts 1965, No. 486, §§ 14, 15; A.S.A. 1947, §§ 19-3644, 19-3645.

14-269-103. General authority — Agreements with federal agencies — Condemnation proceedings.

(a) Any municipality in this state is authorized to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in or dispose of any land, buildings, improvements, or facilities of any and every nature whatever necessary or desirable for the developing and providing of public parks and facilities within or near the municipality including, without limitation, recreation areas, stadiums, auditoriums, arts and crafts centers, folklore centers, interpretative centers, camping areas, and other facilities so as to provide for the recreation and cultural needs of its inhabitants and to stimulate and encourage the economic growth of the municipality and its inhabitants; each such undertaking by a municipality shall sometimes be referred to in this subchapter as a "project".

(b)(1) Any municipality in this state shall have the authority to lease to any individual, firm, or corporation municipal property comprising parks, playgrounds, golf courses, swimming pools, or other property which has been dedicated to a public use for recreational or park purposes, on such terms and conditions as may be desirable or necessary.

(2) Any municipality is also authorized to lease municipally owned lands and facilities to a community college board to be used for educational purposes.

(3) Any lease under this subsection shall be for a period not to exceed ninety-nine (99) years.

(4) Those persons or entities holding leases on municipal park and recreational facilities on July 6, 1977, shall have the first option to renew their leases.

(c) Municipalities are authorized to enter into and carry out appropriate agreements with any agency of the government of the United

States of America, hereinafter referred to as "government," pertaining to the accomplishment of the purposes authorized by this subchapter including, without limitation, loan agreements with the government for the borrowing of money and agreements pertaining to grants from the government.

(d)(1) In the event that necessary lands needed for the accomplishment of the purposes authorized by this subchapter cannot be acquired by negotiation, any municipality is authorized to acquire the needed lands by condemnation proceedings under the power of eminent domain.

(2) The proceedings may be exercised in the manner provided for taking private property for rights-of-way for railroads as set forth in §§ 18-15-1202 — 18-15-1207, or in the manner provided by §§ 18-15-301 — 18-15-307, or pursuant to any other applicable statutory provisions for the exercise of the power of eminent domain by the various municipalities in the State of Arkansas.

History. Acts 1965, No. 486, §§ 1, 10, 11; 1977, No. 795, § 1, A.S.A. 1947, §§ 19-3631, 19-3640, 19-3641, 19-3646.

Publisher's Notes. Acts 1977, No. 795, § 1, is also codified as § 22-4-501(b).

Acts 1977, No. 795, § 3, provided that this act supersedes § 22-4-501 to the extent of any conflict.

Cross References. Disposition of property dedicated for public parks, § 22-4-501.

Lease of property for recreational purposes, §§ 14-234-406, 14-251-107.

CASE NOTES

Scope.

Cities are authorized by this section to acquire land necessary or desirable for the developing and providing of public parks and facilities, but no authorization can be found in this section for the disposition of public parks and playgrounds. James Co. v. Sheppard, 249 Ark. 81, 458 S.W.2d 752 (1970).

14-269-104. Commission.

(a) Any municipality, at its option, may establish a commission to acquire, construct, reconstruct, extend, equip, improve, and operate any project under this subchapter.

(b) The commission shall have full and complete authority with respect to the project and its operation and with respect to the collection and disposition of revenues derived from the operation of the project.

(c) The commission shall consist of either three (3), six (6), or nine (9) members, as the governing body of the municipality appointing the commission shall determine.

(d)(1) Of the initial members of the commission, one-third (⅓) shall serve for a term of one (1) year, one-third (⅓) shall serve for a term of two (2) years, and one-third (⅓) shall serve for a term of three (3) years.

(2) The term of each replacement member shall be for three (3) years.

(e) Members of the commission may be removed only for cause.

(f) The original members of the commission shall be named by the governing body of the municipality by resolution. Thereafter, each successor member, including a member appointed to fill the unexpired term of an existing member, shall be filled by appointment on the basis of a person selected by the remaining members of the commission and reported to the governing body of the municipality, which governing body must approve the appointment of the person so selected by the remaining members of the commission.

(g) Each member of the commission shall take and file with the clerk or recorder of the municipality an oath of office.

(h) In order to be eligible for membership on the commission, a person need only be a qualified elector at the time of original appointment and need not reside within the municipality.

(i) The members of the commission shall receive no compensation for their services, but they shall employ such agents, servants, and employees and shall compensate them upon such terms as shall be necessary in order to effectively carry out the purposes of this subchapter. In this regard, the commission shall have full and complete authority to do any and every act and to take any and every action necessary to carry out the purposes of this subchapter including, without limitation, the authority to contract and the authority to prescribe rates and charges and to enter into necessary rental and lease agreements; however, only the municipality shall have the authority to issue revenue bonds or, in any way, to pledge, obligate, or create a lien upon the project or any of the revenues derived therefrom.

History. Acts 1965, No. 486, § 13; A.S.A. 1947, § 19-3643.

14-269-105. Bonds — Authority to issue.

(a) Municipalities are authorized to use any available revenues for the accomplishment of the purposes set forth in § 14-269-103, and are authorized to issue revenue bonds and to use the proceeds thereof for the accomplishment of the purposes set forth in § 14-269-103, either alone or together with other available funds and revenues.

(b) The amount of bonds issued shall be sufficient to pay the cost of accomplishing the specified purposes, the cost of issuing the bonds, the amount necessary for a reserve, if desirable, the amount necessary to provide for debt service on the bonds until revenues for the payment thereof are available, and any other costs and expenditures of whatever nature incidental to the accomplishment of the specified purposes.

History. Acts 1965, No. 486, § 2; A.S.A. 1947, § 19-3632.

Cross References. Form of bonds, § 19-9-101.

14-269-106. Bonds — Issuance, sale, and execution.

(a)(1) The issuance of revenue bonds shall be by ordinance of the municipality.

(2) The bonds may be coupon bonds payable to bearer or may be made registrable as to principal only with interest coupons, or may be made registrable as to both principal and interest without interest coupons.

(3) The bonds may be exchanged for bonds of another denomination, which bonds of another denomination may, in turn, be either coupon bonds payable to bearer, coupon bonds registrable as to principal only, or bonds registrable as to both principal and interest without interest coupons.

(4) The bonds may be in such form and denominations; may be made payable at such places within or without the state; may be issued in one (1) or more series; may bear such date or dates; may mature at such time or times, not exceeding forty (40) years from their respective dates; may bear interest at such rate or rates; may be payable in such medium of payment; may be subject to such terms of redemption; and may contain such terms, covenants, and conditions as the ordinance authorizing their issuance may provide including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the maintenance and investment of various funds and reserves, the nature and extent of the security, the rights, duties, and obligations of the municipality and the trustee for the holders and registered owners of the bonds, and the rights of the holders and registered owners of the bonds.

(5) There may be successive bond issues for the purpose of financing the same project, including land, buildings, or facilities, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping projects, land, buildings, or facilities, already in existence, whether or not originally financed by bonds issued under this subchapter, with each successive issue to be authorized as provided by this subchapter.

(6) Priority between and among issues and successive issues as to security of the pledge of revenues and mortgage liens on the land, buildings, and facilities involved may be controlled by the ordinance authorizing the issuance of bonds under this subchapter.

(7) The bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas.

(b)(1) The ordinance may provide for the execution by the municipality of an indenture which defines the rights of the bondholders and provides for the appointment of a trustee for the bondholders.

(2) The indenture may control the priority between successive issues and may contain any other terms, covenants, and conditions that are deemed desirable including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the collection and

disposition of revenues, the maintenance of various funds and reserves, the nature and extent of the security, the rights, duties, and obligations of the municipality and the trustee, and the rights of the holders and registered owners of the bonds.

(3) It shall not be necessary for the municipality to publish any indenture or any lease if the ordinance authorizing an indenture or the ordinance authorizing a lease is published as required by the law governing the publication of ordinances of a municipality, the ordinance advises that a copy of the indenture or a copy of the lease, as the case may be, is on file in the office of the clerk or recorder of a municipality for inspection by any interested person, and the copy of the indenture or the copy of the lease, as the case may be, is actually filed with the clerk or recorder of the municipality.

(c)(1) The bonds may be sold for such price, including, without limitation, sale at a discount, and in such manner as the municipality may determine by ordinance.

(2) The bonds may be sold with the privilege of conversion into an issue bearing another rate or rates of interest, upon such terms that the municipality receives no less and pays no more than it would receive and pay if the bonds were not converted, and the conversion shall be subject to the approval of the governing body of the municipality.

(d)(1) The bonds shall be executed by the mayor and the city clerk or recorder of the municipality, and, in case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of the bonds or coupons, the signatures shall, nevertheless, be valid and sufficient for all purposes.

(2) The coupons attached to the bonds may be executed by the facsimile signature of the mayor of the municipality.

History. Acts 1965, No. 486, § 3; 1970 (Ex. Sess.), No. 57, §§ 1, 2; 1975, No. 225, § 6; 1981, No. 425, § 6; A.S.A. 1947. § 19-3633.

14-269-107. Bonds — Issuance for refunding of obligations.

(a) Revenue bonds may be issued under this subchapter for the purpose of refunding any obligations issued under this subchapter.

(b) The refunding bonds may be combined with bonds issued under the provisions of § 14-269-106 into a single issue.

(c)(1) When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations.

(2) If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement thereof.

(d) All bonds issued under this section shall, in all respects, be authorized, issued, and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of those bonds.

(e) The ordinance under which the refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of

lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby.

History. Acts 1965, No. 486, § 5; A.S.A. 1947, § 19-3635.

14-269-108. Bonds — Indebtedness as special obligation — Payment of principal and interest.

(a) The revenue bonds issued under this subchapter shall not be general obligations of the municipality but shall be special obligations. In no event shall the revenue bonds constitute an indebtedness of the municipality within the meaning of any constitutional or statutory limitation.

(b) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter and that it does not constitute an indebtedness of the municipality within any constitutional or statutory limitation.

(c) The principal of and interest on the revenue bonds and paying agent's fees shall be payable from gross revenues derived from the lands, buildings, or facilities acquired, constructed, reconstructed, extended, or improved, in whole or in part, with the proceeds of the bonds.

History. Acts 1965, No. 486, § 4; A.S.A. 1947, § 19-3634.

14-269-109. Bonds — Mortgage lien.

(a) Subject to the subsequent provisions of this section, there shall exist a statutory mortgage lien upon the land, buildings, and facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of revenue bonds issued under this subchapter, which shall exist in favor of the holders of the bonds and in favor of the holders of the coupons attached to the bonds, and the land, buildings, and facilities shall remain subject to the statutory mortgage lien until payment in full of the principal of, and interest on, the revenue bonds.

(b) Anything in this subchapter to the contrary notwithstanding, the ordinance or indenture referred to in § 14-269-106 may impose a forecloseable mortgage lien upon the land, buildings, and facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of revenue bonds issued under this subchapter, and the nature and extent of the mortgage lien may be controlled by the ordinance or indenture including, without limitation, provisions pertaining to the release of all or part of the land, buildings, and facilities from the mortgage lien and the priority of the mortgage lien in the event of successive bond issues as authorized by § 14-269-106.

(c) Subject to such terms, conditions, and restrictions as may be contained in the ordinance or indenture authorizing or securing the bonds, any holder of bonds issued under the provisions of this subchapter, or of any coupons attached thereto, may, either at law or in equity, enforce the mortgage lien and may, by proper suit, compel the performance of the duties of the officials of the issuing municipality as set forth in this subchapter, and in any ordinance or indenture authorizing or securing the bonds.

History. Acts 1965, No. 486, § 6; A.S.A. 1947, § 19-3636.

14-269-110. Bonds — Default in payment.

(a) In the event of a default in the payment of the principal of, or interest on, any revenue bonds issued under this subchapter, any court having jurisdiction may appoint a receiver to take charge of the land, buildings, or facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of revenue bonds issued under this subchapter, upon which land, buildings, or facilities, or any part thereof, there is a mortgage lien securing the revenue bonds with reference to which there is a default in the payment of principal or interest.

(b) The receiver shall have the power to operate and maintain the land, buildings, or facilities; to charge and collect rates or rents sufficient to provide for the payment of the principal of and interest on the bonds after providing for the payment of all costs of receivership and operating expenses of the land, buildings, or facilities; and to apply the income and revenues derived from the land, buildings, or facilities in conformity with this subchapter and the ordinance or indenture authorizing or securing the bonds.

(c) When the default has been cured, the receivership shall be ended and the properties returned to the municipality.

(d) The relief afforded by this section shall be construed to be in addition and supplemental to the remedies that may be afforded the trustee for the bondholders and the bondholders in the ordinance or indenture authorizing or securing the bonds and shall be so granted and administered as to accord full recognition to priority rights of bondholders as to the pledge of revenues from, and the mortgage lien on, the land, buildings, or facilities as specified in, and fixed by, the ordinance or indenture authorizing or securing successive bond issues.

History. Acts 1965, No. 486, § 7; A.S.A. 1947, § 19-3637.

14-269-111. Bonds — Tax exemption.

Bonds issued under this subchapter shall be exempt from all state, county, and municipal taxes, including income and inheritance taxes.

History. Acts 1965, No. 486, § 8; A.S.A. 1947, § 19-3638.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Ark. Const. Amend. 57, § 1 and § 26-3-302. Arkansas Const. Amend. 57, § 1 provides that the General Assembly may classify intangible personal property for assessment at lower percentages of value than other property and may exempt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempts all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

14-269-112. Bonds — Investment of public funds.

(a) Any municipality; any board, commission, or other authority duly established by ordinance of any municipality; the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any municipality; or the board of trustees of any retirement system created by the General Assembly, may, in its discretion, invest any of its funds not immediately needed for its purposes in revenue bonds issued under the provisions of this subchapter.

(b) Revenue bonds issued under the provisions of this subchapter shall be eligible to secure the deposit of public funds.

History. Acts 1965, No. 486, § 9; A.S.A. 1947, § 19-3639.

Subchapter 2 — Operation and Management of Parks

SECTION.
14-269-201. Authority for creation of commission in cities of the first and second class.
14-269-202. Commission — Creation — Members.
14-269-203. Commissioners — Powers and duties.
14-269-204. Commissioners — Rules and regulations.
14-269-205. Commissioners — Park fund.
14-269-206. Commissioners — Reports — Appropriations.

Effective Dates. Acts 1947, No. 348, § 15: approved Mar. 28, 1947 Emergency clause provided: "Whereas, in certain municipalities there is a need for a recreational park, and whereas, it is to the best interests that said park be operated and controlled in the most economical and feasible manner possible, and whereas, it is to the best interest of citizens of said municipalities that operation of said park be in the most economical and business-like manner possible, and whereas, the most economical and proper method of operation may be obtained through the passage of this act, an emergency is hereby declared to exist, and this act being necessary for the immediate protection of the public peace, health and safety, this act, therefore, will take effect and be in force from and after its passage."

Acts 1951, No. 240, § 3: Mar. 6, 1951. Emergency clause provided: "Whereas, in certain municipalities there is need for a recreational park or parks, and it is to the best interests that said parks be operated and controlled in the most economical and feasible manner possible; and whereas, it might be to the best interests of the citizens of said municipalities that there be more than one park and more than one commission in certain cases; and whereas, it is necessary that this condition should be attained as quickly as possible, and this Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall take effect and be in full force from and after its passage and approval."

14-269-201. Authority for creation of commission in cities of the first and second class.

Any city of the first or second class that may desire to set up a recreational park or parks for the municipality may, by appropriate action of the city council, create a commission or commissions, if desired, for the purpose of operating and managing the park within the municipality.

History. Acts 1947, No. 348, § 1; 1951, No. 240, § 1; A.S.A. 1947, § 19-3606.

14-269-202. Commission — Creation — Members.

(a) Any city of the first or second class desiring to avail itself of the benefits of this subchapter, by a majority vote of the elected and qualified members of the city council, may enact an ordinance creating a recreation commission to be composed of five (5) citizens who are qualified electors of the municipality and, by affirmative vote of three-fourths (¾) of the elected and qualified members of the city council, may repeal the ordinance creating the commission.

(b) The commissioners shall be appointed by the mayor and confirmed by a majority vote of the duly elected and qualified members of the city council and shall hold office for a term of five (5) years; however, the first commissioners to be appointed and confirmed shall serve for terms of one (1), two (2), three (3), four (4), and five (5) years, respectively, to be designated by the mayor and city council. Thereafter, upon the expiration of their respective terms, commissioners appointed by the mayor and approved by a majority vote of the city council shall each be appointed for a term of five (5) years.

(c) In the event of a vacancy occurring on the commission, it shall be filled by appointment by the mayor, subject to the approval of a majority vote of the duly elected and qualified members of the city council.

(d) Each commissioner shall file the oath required by law in the State of Arkansas of public officials.

(e)(1) Any city of the first or second class which has previously created or which may create a city recreation commission, as authorized in this subchapter, is authorized, by ordinance of the governing body of the city, to increase the membership of the commission from five (5)

members to seven (7) members. The ordinance enlarging the commission may provide that the two (2) additional members of the commission are not required to be qualified electors of the municipality.

(2) When any city enacts an ordinance increasing the membership of the city recreation commission from five (5) members to seven (7) members, as authorized in this subsection, one (1) of the additional members first appointed shall serve for a term of four (4) years and one (1) shall serve for a term of five (5) years, and their successors shall be appointed for terms of five (5) years.

(f) Upon the appointment of the commissioners as provided in this section, the mayor and city council shall execute such instruments and enact such measures as may be necessary to vest complete charge of the municipally owned recreational park in the commissioners.

(g) Any commissioner appointed by the provisions of this section may be removed for cause upon a two-thirds (⅔) vote of the duly elected and qualified members of the city council.

History. Acts 1947, No. 348, §§ 2-4; 12; 1983, No. 681, §§ 1, 2; A.S.A. 1947, §§ 19-3606.1, 19-3607 — 19-3609, 19-3617

14-269-203. Commissioners — Powers and duties.

(a) The commissioners appointed pursuant to this subchapter shall have full and complete authority to build, manage, operate, maintain, and keep in a good state of repair any municipal buildings deemed necessary to carry on a recreation park for the municipality including the building of swimming pools, field houses, stadiums, zoos, or other buildings necessary to carry on the recreational park.

(b) The commissioners shall have full and complete charge of the buildings and grounds, including the right to control and permit, or refuse to permit, such public gatherings or other meetings or affairs, as the commissioners shall see fit and deem to be in the best interests of the city.

(c) The commissioners shall have the right to employ or remove managers, janitors, and other employees of whatsoever nature, kind, or character and to fix, regulate, and pay their salaries since it is the intention of this subchapter to vest in the commissioners the authority to build, operate, manage, maintain, and control the municipal recreational park and to have full and complete charge thereof.

(d) The commissioners shall not have the authority or power to sell, mortgage, or encumber the property unless otherwise authorized by the statutes of Arkansas.

(e) The commissioners shall have the exclusive right and power to make purchases of all supplies, apparatus, and other property and things requisite and necessary for the management and operation of the recreational park, including the construction thereof and repairs and additions thereto.

(f) The commissioners shall have the authority to enter into contracts with persons, firms, corporations, or organizations for the use of recreational park buildings or parts thereof.

History. Acts 1947, No. 348, §§ 5-7, A.S.A. 1947, §§ 19-3610 — 19-3612.

CASE NOTES

Swimming Pools.

Evidence was sufficient to establish that swimming pool operated by city was operated in governmental capacity and not in a proprietary capacity for profit, and city was not liable for drowning of child in such pool. Handley v. City of Hope, 137 F. Supp. 442 (W.D. Ark.), appeal dismissed, 239 F.2d 647 (8th Cir. 1956).

Where municipal swimming pool was being operated in city's governmental capacity, plaintiff could not avoid governmental immunity in action against city based on drowning of child in pool by alleging an action in contract where the action was clearly in tort. Handley v. City of Hope, 137 F. Supp. 442 (W.D. Ark.), appeal dismissed, 239 F.2d 647 (8th Cir. 1956).

Where evidence showed that city owned property on which swimming pool was constructed and leased the pool to a boys' club and club operated the pool and received all revenues therefrom, a minor who was injured while diving where depth of pool was allegedly unmarked could not sue the city in tort, since city in owning pool was acting in governmental capacity and was immune from tort liability to user of pool, there being no liability insurance involved. Cabbiness v. City of North Little Rock, 228 Ark. 356, 307 S.W.2d 529 (1957).

14-269-204. Commissioners — Rules and regulations.

The commissioners shall adopt such rules and regulations as they may deem necessary and expedient for the proper operation and management of the municipal recreational park, and they shall have the authority to alter, change, or amend the rules and regulations at their discretion.

History. Acts 1947, No. 348, § 8; A.S.A. 1947, § 19-3613.

14-269-205. Commissioners — Park fund.

(a) The commissioners appointed pursuant to this subchapter shall have the authority to utilize all revenues derived from the operation of the recreational park in the operation of the recreational park.

(b)(1) All funds derived from the use of the recreational park shall be segregated into a park fund, which fund shall be used exclusively in the operation of the recreational park by the commissioners.

(2) Moneys in the fund shall not be mingled with other funds of the city and shall be handled exclusively by the commissioners.

(c)(1) The commissioners shall each furnish to the city a five thousand dollar ($5,000) surety bond that will serve to insure the city against any misappropriation or mishandling of funds.

(2) The surety on the bonds shall be a reputable surety corporation.

(3) The premium on the bonds shall be paid from moneys in the park fund.

(d)(1) The commissioners shall receive no salary for their services but shall be reimbursed from the park fund for actual expenses incurred in the performance of their duties.

(2) The park fund may also be expended by the commissioners, as they deem best, for the purpose of obtaining attractions to meet on the park.

History. Acts 1947, No. 348, § 10; A.S.A. 1947, § 19-3615.

14-269-206. Commissioners — Reports — Appropriations.

(a)(1) The commissioners shall submit quarterly reports, beginning three (3) months after they take their oath of office and each three (3) months thereafter, reporting in full on the operations, including an accounting of receipts and disbursements, to the mayor and city council, and furnish such other and further reports, data, and information as may be requested by the mayor or city council.

(2) The quarterly report to the mayor and city council, with respect to receipts and disbursements, shall be certified by the commissioners as correct.

(3) The commissioners shall further submit an annual audit of the operations of the recreational park to the mayor and city council.

(b)(1) Upon each quarterly report being made to the mayor and city council by the commissioners, the city council may appropriate funds from the general revenue fund of the city, or from such other funds as the city may have available, to make up any deficits or to provide such funds as may be necessary to carry on the operations of the recreational park.

(2) The city council, at any time other than when the quarterly report is filed, may appropriate such funds as it deems necessary from the general revenue fund, or from such other funds as the city may have available, for the purpose of maintaining and operating the recreational park.

History. Acts 1947, No. 348, §§ 9, 11; A.S.A. 1947, §§ 19-3614, 19-3616.

Subchapter 3 — Operation and Management of Parks and Recreation Programs

SECTION.
14-269-301. Authority for creation of commission in cities of the first and second class.
14-269-302. Commission — Creation — Members.
14-269-303. Commissioners — Powers and duties — Selection of employees.
14-269-304. Commissioners — Rules and regulations.
14-269-305. Commissioners — Park fund.
14-269-306. Commissioners — Reports — Appropriations.

Effective Dates. Acts 1949, No. 471, § 16: approved Mar. 29, 1949. Emergency clause provided: "Whereas, in certain municipalities there is a need for a parks and

recreation program, and, whereas, it is to the best interests that said program be operated and controlled in the most economical and feasible manner possible, and whereas, it is to the best interests of citizens of said municipalities that operation of said program be in the most businesslike and economical manner possible, and whereas, the most economical and proper method of operation may be obtained through the passage of this Act, an emergency is hereby declared to exist, and this Act being necessary for the immediate protection of the public peace, health, and safety, this Act, therefore, will take effect and be in force from and after its passage."

Acts 1979, No. 102, § 4: Feb. 11, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the development of an adequate parks and recreation program is an essential function of a number of cities of the first or second class in this State, and that the immediate passage of this Act is necessary to enable the city councils to expand the membership of their parks and recreation commissions, if deemed necessary, to promote efficiency in the operation of said commissions. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

14-269-301. Authority for creation of commission in cities of the first and second class.

Any city of the first or second class that may desire to set up a parks and recreation program for the municipality, by appropriate action of the city council, may create a commission for the purpose of operating and managing the program within the municipality.

History. Acts 1949, No. 471, § 1; A.S.A. 1947, § 19-3618.

14-269-302. Commission — Creation — Members.

(a)(1) Any city of the first or second class desiring to avail itself of the benefits of this subchapter, by a majority vote of the elected and qualified members of the city council, may enact an ordinance creating a parks and recreation commission to be composed of five (5) citizens who are qualified electors of the municipality and, by affirmative vote of three-fourths (¾) of the elected and qualified members of the city council, may repeal the ordinance creating the commission.

(2) The city council of any city of the first or second class may increase the membership of its parks and recreation commission by two (2) additional members if the city council determines that an enlarged commission could better serve the city's parks and recreation program.

(b) The commissioners shall be appointed by the mayor, shall be confirmed by a majority vote of the duly elected and qualified members of the city council, and shall hold office for a term of five (5) years. However, the first commissioners to be appointed and confirmed shall serve for terms of one (1), two (2), three (3), four (4), and five (5) years, respectively, to be designated by the mayor and city council, and thereafter, upon the expiration of their respective terms, commissioners appointed by the mayor and approved by a majority vote of the city council shall each be appointed for a term of five (5) years.

(c) In the event of a vacancy occurring on the commission, it shall be filled by appointment by the mayor, subject to the approval of a majority vote of the duly elected and qualified members of the city council.

(d) Each commissioner shall file the oath required in the State of Arkansas of public officials.

(e)(1) In the event the city council of any city votes to increase the membership of its parks and recreation commission from five (5) to seven (7) members, then the two (2) additional members of the commission shall be appointed in the manner provided in subsection (b) of this section and shall serve terms of five (5) years. However, the first additional members appointed to the commission shall determine by lot their respective terms in order that the term of one (1) member shall be for three (3) years and the term of the other member shall be for five (5) years.

(2) Their successors shall be appointed for five-year terms.

(3) The members shall qualify in the same manner as provided in subsection (a) of this section for other commission members, and vacancies in either of the additional member positions shall be filled in the manner provided in subsection (c) of this section.

(f) Upon the appointment of the commissioners as provided in this section, the mayor and city council shall execute such instruments and enact such measures as may be necessary to vest complete charge of the municipally owned parks and recreation facilities in the commissioners.

(g) Any commissioner appointed by the provisions of this section may be removed for cause upon a two-thirds (⅔) vote of the elected and qualified members of the city council.

History. Acts 1949, No. 471, §§ 2-4, 13; 1979, No. 102, §§ 1, 2; A.S.A. 1947, §§ 19-3619 — 19-3621, 19-3630.

Publisher's Notes. Acts 1979, No. 102, § 3, provided: "It is the intent of this act to establish procedures whereby the city council of cities of the first or second class may add two (2) additional members to their parks and recreation commissions. Nothing in this act shall be deemed to affect the present membership of a city's parks and recreation commission, or of the terms of office of existing commission members."

14-269-303. Commissioners — Powers and duties — Selection of employees.

(a) The commissioners appointed pursuant to this subchapter shall have full and complete authority to build, manage, operate, maintain, and keep in a good state of repair any municipal buildings deemed necessary to carry on a parks and recreation program for the municipality including the building of swimming pools, field houses, stadia, zoos, or other buildings necessary to carry on a parks and recreation program.

(b) The commissioners shall have full and complete charge of the buildings and grounds including the right to control and permit, or refuse to permit, such public gatherings or other meetings or affairs as the commissioners shall see fit and deem to be in the best interests of the city.

(c)(1) The commissioners shall have the exclusive right and power to make purchases of all supplies, apparatus, and other property and things requisite and necessary for the management and operation of the parks and recreation program including the construction of facilities and repairs and additions thereto.

(2) The commissioners shall not have authority or power to sell, mortgage, or encumber the property unless otherwise authorized by the statutes of Arkansas.

(d) The commissioners shall have the authority to enter into contracts with persons, firms, corporations, or organizations for the use of buildings, or parts thereof, of the parks and recreation program.

(e) The employees necessary in the operation of the parks and recreation program, as well as their salaries and classifications, shall be selected and determined as prescribed by law through competitive examination and certification by the civil service commission.

History. Acts 1949, No. 471, §§ 5-8; A.S.A. 1947, §§ 19-3622 — 19-3625.

CASE NOTES

Swimming Pools.

Evidence was sufficient to establish that swimming pool operated by city was operated in governmental capacity and not in a proprietary capacity for profit, and city was not liable for drowning of child in such pool. Handley v. City of Hope, 137 F. Supp. 442 (W.D. Ark.), appeal dismissed, 239 F.2d 647 (8th Cir. 1956).

Where municipal swimming pool was being operated in city's governmental capacity, plaintiff could not avoid governmental immunity in action against city based on drowning of child in pool by alleging an action in contract where the action was clearly in tort. Handley v. City of Hope, 137 F. Supp. 442 (W.D. Ark.), appeal dismissed, 239 F.2d 647 (8th Cir. 1956).

Where evidence showed that city owned property on which swimming pool was constructed and leased the pool to a boys' club and club operated the pool and received all revenues therefrom, a minor who was injured while diving where depth of pool was allegedly unmarked could not sue the city in tort, since city in owning pool was acting in governmental capacity and was immune from tort liability to user of pool, there being no liability insurance involved. Cabbiness v. City of North Little Rock, 228 Ark. 356, 307 S.W.2d 529 (1957).

14-269-304. Commissioners — Rules and regulations.

The commissioners shall adopt such rules and regulations as they may deem necessary and expedient for the proper operation and management of the municipal parks and recreation program, and they shall have the authority to alter, change, or amend the rules and regulations at their discretion.

History. Acts 1949, No. 471, § 9; A.S.A. 1947, § 19-3626.

14-269-305. Commissioners — Park fund.

(a) The commissioners appointed pursuant to this subchapter shall have the authority to utilize all revenues derived from the operation of the parks and recreation program in the operation of the parks and recreation program.

(b)(1) All funds derived from the use of the parks and recreation program shall be segregated into a park fund, which fund shall be used exclusively in the operation of the parks and recreation program by the commissioners.

(2) Moneys in the fund shall not be mingled with other funds of the city and shall be handled exclusively by the commissioners.

(c)(1) The commissioners shall furnish the city a five thousand dollar ($5,000) surety bond that will serve to insure the city against any misappropriation or mishandling of funds.

(2) The surety on the bond shall be a reputable surety corporation.

(3) The premium on the bond shall be paid from moneys from the park fund.

(d)(1) The commissioners shall receive no salary for their services but shall be reimbursed from the park fund for actual expenses incurred in the performance of their duties.

(2) The park fund may also be expended by the commissioners, as they deem best, for the purpose of obtaining attractions to be staged as a part of the parks and recreation program.

History. Acts 1949, No. 471, § 11, A.S.A. 1947, § 19-3628.

14-269-306. Commissioners — Reports — Appropriations.

(a)(1) The commissioners shall submit quarterly reports, beginning three (3) months after they take their oath of office and each three (3) months thereafter, reporting in full on the operations including an accounting of receipts and disbursements, to the mayor and city council and shall furnish such other and further reports, data, and information as may be requested by the mayor and city council.

(2) The quarterly report to the mayor and city council, with respect to receipts and disbursements, shall be certified by the commissioners as correct.

(3) The commissioners shall further submit an annual audit of the operations of the parks and recreation program to the mayor and city council.

(b)(1) Upon each quarterly report being made to the mayor and city council by the commissioners, the city council may appropriate funds from the general revenue fund of the city or from such other funds as the city may have available to make up any deficits or to provide such funds as may be necessary to carry on the operations of the parks and recreation program.

(2) At any time other than when the quarterly report is filed, the city council may appropriate such funds as it deems necessary from the

general revenue fund or from such other funds as the city may have available for the purpose of maintaining and operating the parks and recreation program.

History. Acts 1949, No. 471, §§ 10, 12; A.S.A. 1947, §§ 19-3627, 19-3629.

CASE NOTES

Cited: Cherokee Village Homeowners Protective Ass'n v. Cherokee Village Rd. & St. Imp. Dist. No. 1, 248 Ark. 1055, 455 S.W.2d 93 (1970).

CHAPTER 270

RURAL COMMUNITY PROJECTS

SUBCHAPTER.
1. General Provisions.
2. Outdoor Recreational Facilities.

Effective Dates. Acts 1979, No. 370, § 4: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly meeting in Regular Session that the need for community projects in unincorporated rural communities and small incorporated towns is great and that this Act is necessary, effective July 1, 1979, to meet the needs of these communities. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on July 1, 1979."

Acts 1983, No. 603, § 4: Mar. 21, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly that the provisions of Act 736 of 1977, as amended, may have been abused and that the Legislative Joint Audit Committee staff is encountering difficulties in completing audits of such grant awards, therefore it is necessary that this act be enacted as soon as possible in order to obviate abuses of grant funds from appropriations made available from and after July 1, 1983. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Subchapter 1 — General Provisions

SECTION.
14-270-101. Purpose.
14-270-102. Definitions.
14-270-103. Grant of state funds.
14-270-104. Funding upon exhaustion of state funds.
14-270-105. Audit of funds.

14-270-101. Purpose.

(a) The General Assembly recognizes that there are numerous unincorporated rural communities and small incorporated rural cities and towns in this state which do not have adequate fire protection or social, recreational, cultural, or other facilities available for the benefit of their citizens or comparable to the facilities available in larger cities of this

state. Many of these rural communities and rural small cities and towns lack the resources to develop and implement programs to enhance their viability.

(b) The General Assembly further recognizes the need to establish a program whereby, through the participation of local citizens and by the use of state incentive funds, unincorporated rural communities and small incorporated rural cities and towns in this state will be provided opportunities for the construction, development, and improvement of fire protection and construction projects benefiting the citizens. The program will provide matching grants to rural communities to alleviate this problem and encourage rural communities to develop programs designed to meet their uniquely rural needs.

History. Acts 1977, No. 736, § 1; 1979, No. 370, § 1; A.S.A. 1947, § 17-1420; Acts 1991, No. 1009, § 1.

14-270-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Community, city, or town projects" means, but shall not be limited to, parks, playgrounds, community meeting halls, community cultural facilities, picnic grounds, community recreation facilities, firefighting equipment and facilities, and similar projects to be available to the members of the unincorporated community or citizens of the small city or town in the rural areas of the state for their use, benefit, and enjoyment;

(2) "Rural area" or "rural community" means all the territory of the State of Arkansas that is not within the outer boundary of any city or town having a population of twenty thousand (20,000) or more according to the latest federal decennial census or within such a city's or town's neighboring urbanized areas;

(3) "Small city or town" means a city or a town incorporated under the laws of the State of Arkansas with a population of less than three thousand (3,000) persons according to the latest federal decennial census;

(4) "State" shall mean the State of Arkansas;

(5) "Unincorporated community" means an unincorporated community in a rural area of the state;

(6) "Urbanized area" means the areas of dense settlement and suburbanization contiguous to the central city of a metropolitan area;

(7) "Property in kind" means real or personal property.

History. Acts 1977, No. 736, § 1; 1979, No. 370, § 1, A.S.A. 1947, § 17-1420; Acts 1991, No. 1009, § 2; 1995, No. 649, § 1.

Amendments. The 1995 amendment added (7).

14-270-103. Grant of state funds.

(a) From funds provided by the General Assembly therefor, the Chief Fiscal Officer of the State, with the advice of the Arkansas Rural Development Commission, is authorized to make grants to unincorporated communities and small cities or towns in this state, whenever:

(1) Representatives of unincorporated communities or small cities or towns in this state develop a written plan for a community, city, or town project and submit the plan, in the case of an unincorporated community, to the quorum court of the county or, in the case of a small city or town, to the governing body of the city or town, for its approval and adoption;

(2)(A) The members of the community or small city or town presenting the request to the quorum court or the governing body shall have submitted proof that, through donations of either money or property in kind, the citizens of the community, city, or town, have pledged or will make available one-fourth (¼) of the cost of the project and that no tax funds are included in the citizens' support.

(B) The members of the community, or citizens of the city or town, may also provide the county's or city's or town's one-fourth (¼) share in lieu of the county's or city's or town's defraying one-fourth (¼) of the cost of the project; provided, if a small incorporated town has sufficient revenues in its general fund to cover one-half (½) of the project costs, the town shall have the option to utilize said funds as an alternative to the other method set forth in this section;

(3) The quorum court of the county or governing body of the city or town approves and, if the citizens of the community, city, or town do not provide the county's or the city's or town's share, appropriates the funds or provides property in kind to defray one-fourth (¼) of the cost of the project; and

(4) The facts enumerated in subdivisions (a)(1)-(3) of this section are certified to the Chief Fiscal Officer of the State by the county judge of the county or the mayor of the city or town, setting forth the name of the person or persons who will administer the funds if the state grant is approved, outlining the details of the project, and certifying that the project has been determined by the quorum court of the county or governing body of the city or town to be an approved community, city, or town project eligible to receive funds under the provisions of this chapter.

(b) Upon receipt of the certification of the quorum court or governing body of the city or town and upon determination that all matters required by subsection (a) of this section have been complied with, the Chief Fiscal Officer of the State may approve a state grant to be used in connection with the community, city, or town project in an amount of one-half (½) of the estimated project cost; however, in no event shall the total cost of any one (1) project under the provisions of this chapter exceed thirty thousand dollars ($30,000), and the state's share thereof shall not exceed one-half (½), or fifteen thousand dollars ($15,000), of the amount.

(c)(1) Project funds from all sources shall be expended through a fund established on the books of the county, city, or recorder treasurer.

(2) All project expenditures, with the invoices attached, shall be approved by the county judge or mayor and shall remain on file in the office of the county judge or mayor for three (3) years or until audited, whichever is later.

(d)(1) All projects must be completed within twelve (12) months after the date of the grant award.

(2) A final report, on a form provided by the Chief Fiscal Officer of the State, of all funds expended, along with the state's one-half (½) of all unexpended funds, shall be submitted by the county judge or mayor to the Chief Fiscal Officer of the State no more than sixty (60) days following the project's completion or within the one-year period, whichever comes first.

History. Acts 1977, No. 736, § 2; 1979, No. 370, § 2; 1983, No. 603, § 1; 1983, No. 788, § 1; A.S.A. 1947, § 17-1421; Acts 1991, No. 1009, § 3; 1993, No. 946, § 1; 1995, No. 512, § 1; 1995, No. 649, § 2.

Publisher's Notes. Acts 1983, No. 603, § 2, provided: "The provisions of this act shall be applicable to grant requests for unincorporated rural communities and small incorporated towns approved by the chief fiscal officer of the state payable from appropriations provided by the General Assembly that are available from and after July 1, 1983."

Amendments. The 1993 amendment added "with the advice of the Arkansas Development Commission" in (a); made minor changes in (a)(2); and substituted "(a)(1)-(3) of this section" for "(1) through (3) of this subsection" in (a)(4).

The 1995 amendment by No. 512 divided former (a)(2) into (a)(2)(A) and (B); and added the proviso in present (a)(2)(B).

The 1995 amendment by No. 649 rewrote (a)(2); and, in (a)(3), substituted "provide" for "pay" and inserted "or provides property in kind."

14-270-104. Funding upon exhaustion of state funds.

(a) In the event sufficient state funds have not been appropriated to provide the state's matching share of all eligible approved community, city, or town projects certified to the Chief Fiscal Officer of the State by the respective county judges or mayors of this state, the Chief Fiscal Officer of the State, with the advice of the Arkansas Rural Development Commission, shall approve payments for projects in the order in which each project application is filed with his office until all funds available during each fiscal year have been exhausted, shall defer until the next fiscal year the various projects for which adequate funds are not available during the preceding fiscal year, and shall give those projects priority in the order in which filed with the Office of Rural Advocacy of the Arkansas Rural Development Commission for funding from moneys appropriated by the General Assembly for that fiscal year.

(b)(1) However, in the event project applications for the state's matching share of community, city, or town projects in any county are not submitted for the use of the funds available for community, city, or town projects in that county during any fiscal biennium, and application therefor has not been filed with the Office of Rural Advocacy within thirty (30) days prior to the end of the fiscal biennium, the Arkansas

Rural Development Commission shall make the funds remaining for projects in that county available for approved community, city, or town projects in other counties which have applied for more project matching funds than were available.

(2) The Arkansas Rural Development Commission shall give priority in the allocation of the unused project funds to approved projects in other counties in the order in which applications were received for the projects.

History. Acts 1977, No. 736, § 2A; 1979, No. 370, § 3; A.S.A. 1947, § 17-1422; Acts 1991, No. 1009, § 4; 1993, No. 946, § 2.

Amendments. The 1993 amendment, in (a), added "with the advice of the Arkansas Rural Development Commission" and substituted "Office of Rural Advocacy of the Arkansas Rural Development Commission" for the third occurrence of "Chief Fiscal Officer of the State"; in (b)(1), substituted "Office of Rural Advocacy" for "Chief Fiscal Officer of the State" preceding "within thirty (30) days" and substituted "Arkansas Rural Development Commission" for "Chief Fiscal Officer of the State" following "fiscal biennium, the"; and, substituted "Arkansas Rural Development Commission" for "Chief Fiscal Officer of the State" in (b)(2).

14-270-105. Audit of funds.

All state and county funds made available for community, city, or town projects under the provisions of this chapter shall be audited by the Division of Legislative Audit in connection with the annual audit of each county or city or town to assure that the funds have been used for the purposes for which they were made available under the provisions of this chapter.

History. Acts 1977, No. 736, § 3; A.S.A. 1947, § 17-1423; Acts 1991, No. 1009, § 5.

Subchapter 2 — Outdoor Recreational Facilities

SECTION.
14-270-201. Legislative intent.
14-270-202. Elements of the grants program.
14-270-203. Authorization.

14-270-201. Legislative intent.

The General Assembly recognizes outdoor recreation as an important element to the quality of life in Arkansas. Outdoor recreation is interlocked to the emotional and economic well being of the state's citizens. Therefore, it is the desire of the General Assembly to establish a new outdoor grants program that shall assist small communities and rural areas of Arkansas with outdoor recreational facilities.

History. Acts 1991, No. 271, § 1; 1991, No. 306, § 1.

14-270-202. Elements of the grants program.

There is hereby established the FUN Parks Grants Program to be administered by the Arkansas Department of Parks and Tourism. The purpose of the FUN Parks Program is to provide basic outdoor recreation facilities including baseball and softball fields, basketball courts, picnic tables and pavilions, and playground equipment to residents of small Arkansas communities. The goal of this program is to build two hundred (200) new outdoor parks statewide in communities of two thousand five hundred (2,500) or less as established by the 1990 census. Up to fifty (50) new FUN parks may be constructed each year in each of the next four (4) years at a cost not to exceed ten thousand dollars ($10,000) for each FUN park.

History. Acts 1991, No. 271, § 2; 1991, No. 306, § 2.

14-270-203. Authorization.

The Arkansas Department of Parks and Tourism is herein authorized to promulgate procedures, rules, guidelines, or regulations necessary for the administration of the FUN Park Grants Program.

History. Acts 1991, No. 271, § 3; 1991, No. 306, § 3.

CHAPTER 271

UNDERGROUND FACILITIES DAMAGE PREVENTION

SECTION.
14-271-101. Title.
14-271-102. Definitions.
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14-271-105. Ordinance or resolution adopting provisions.
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14-271-113. Notice of damage required — Exception.
14-271-114. Operators of underground pipeline facilities.
14-271-115. No responsibility for nonmember facilities.

Publisher's Notes. Acts 1987, No. 600, § 15, provided, in part, that no provision of this chapter shall be construed to amend or repeal § 27-67-218 or § 27-67-304.

Acts 1989, No. 370, § 6, provided, in part, that no provision of this act shall be construed to amend or repeal § 27-67-218 or § 27-67-304.

Acts 1991, No. 762, § 1, provided: "It is the purpose and intent of this Act to amend The Arkansas Underground Facilities Damage Prevention Act, Arkansas Code Annotated 14-271-101 et seq., to

comply with regulations promulgated by the United States Department of Transportation governing federal grants-in-aid for state pipeline safety programs. The Department of Transportation adopted regulations mandating that a state's one (1) call notification system meet certain criteria, with respect to underground pipeline facilities, as a condition to a state's eligibility for the aforementioned federal grants-in-aid program. (55 Fed. Reg. 38,688 (1990) (to be codified at 49 C.F.R. Part 198). Accordingly, the legislature hereby finds and determines that this Act is necessary and is in the public interest, to ensure that the State of Arkansas will qualify for federal grants-in-aid relating to state pipeline safety programs."

14-271-101. Title.

This chapter may be cited as the "Arkansas Underground Facilities Damage Prevention Act".

History. Acts 1987, No. 600, § 1.

14-271-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) Approximate location of underground facilities means a strip of land at least three feet (3′) wide but not wider than the width of the facility plus one and one-half feet (1 ½′) on either side of the facility;

(2) "Damage" includes the substantial weakening of structural or lateral support of underground facilities, the penetration or destruction of any protective coating, housing, or other protective device of underground facilities, the partial or complete severance of an underground facility, and the rendering of any underground facility inaccessible;

(3) "Demolish" or "demolition" means any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by means of any powered tools, powered equipment, exclusive of transportation equipment, or discharge explosives;

(4) "Excavate" or "excavation" means to dig, compress, or remove earth, rock, or other materials in or on the ground by use of mechanized equipment or blasting, including, but not necessarily limited to, augering, boring, backfilling, drilling, grading, pile-driving, plowing in, pulling in, trenching, tunneling, and plowing;

(5) "Mechanized equipment" means equipment operated by means of mechanical power, including trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows, and other equipment used for plowing in or pulling in cable or pipe;

(6) "Member operator" means any operator that is a member of the Arkansas One Call Center;

(7) "One Call Center" means a center operated by an organization which has as one of its purposes to receive notification of planned excavation and demolition in a specified area from excavators and to disseminate such notification of planned excavation or demolition to operators who are members of the center;

(8) "Operator" means any public utility as defined in § 23-1-101 which owns or operates an underground facility; all municipally owned

or operated water, sewer, or electric utilities; any gas utility, however owned or operated; all master meter operators whose underground facilities cross property other than their own or under public rights-of-way; and any other water or sewer utilities, owned or operated individually or by property owners' associations, improvement districts, or property developers, serving in excess of one hundred (100) customers;

(9) "Person" means any individual, any corporation, partnership, association, or any other entity organized under the laws of any state or any subdivision or instrumentality of a state, and any employee, agent, or legal representative thereof;

(10) "Preengineered project" means a public project wherein the public agency responsible for the project, as part of its engineering and contract procedures, holds a formal meeting prior to the commencement of any construction work on the project in which all persons determined by the public agency to have underground facilities located within the construction area of the project are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground facilities, if any, within the construction area and wherein the location of all known underground facilities are located or noted on the engineering drawing and specifications for the project;

(11) "Public agency" means the state or any board, commission, or agency of the state and any city, town, county, subdivision thereof, or other governmental entity;

(12) "Right-of-way" means any area along which an underground facility is located;

(13) "Underground facility" means any line, system, and appurtenance or facility used for producing, storing, conveying, transmitting, or distributing communications, electricity, gas, heat, water, steam, or sewage, but shall not include cable television facilities;

(14) "Underground pipeline facilities" means any underground pipeline facility used to transport natural gas or hazardous liquids. However, this definition does not apply to persons, including operator's master meters, whose primary activity does not include the production, transportation, or marketing of gas or hazardous liquids or to master-metered systems whose underground facilities do not cross property other than their own or are not located under public rights-of-way; and

(15) "Working day" means every day, except Saturday, Sunday, and national and legal state holidays.

History. Acts 1987, No. 600, § 2; 1989, No. 370, §§ 1, 5; 1991, No. 762, §§ 2, 3; 1995, No. 727, §§ 1, 6.

Amendments. The 1995 amendment inserted present (1), redesignating (1)-(4) as (2)-(5); inserted present (6) and (7); renumbered former (6)-(9) as (8)-(11); and inserted present (12), renumbering former (10)-(12) as (13)-(15); inserted "all master meter rights-of-way" in present (7); inserted "or" following "any state" in present (8); added "or to master-metered .. rights-of-way; and" in present (13); and made stylistic changes.

14-271-103. Applicability.

(a) The Arkansas Public Service Commission shall, after public comment and hearing as provided below, promulgate regulations providing for an Arkansas one call center to be established and maintained by all operators subject to the jurisdiction of the commission.

(b) The regulations shall at a minimum be consistent with the requirements of any federal law relating to one call centers, and otherwise shall provide standards and guidelines for the organization and administration by operators of the Arkansas One Call Center consistent with the terms, purposes, and requirements of this chapter, provided, however, that nothing herein, nor in the rules to be promulgated by the commission, shall be construed to restrict, diminish, or otherwise affect the ratemaking authority and responsibility of the commission with respect to One Call System expenditures by utilities or with respect to any other matter.

History. Acts 1987, No. 600, § 13; 1989, No. 370, § 2.

A.C.R.C. Notes. Acts 1989, No. 370, § 2, provided, in part, that: "Within sixty days of the enactment of this act, a proposed form or forms of organization, and policies and procedures of the Arkansas One Call Center shall be submitted by the operators to the Arkansas Public Service Commission for review in such detail as the commission may require. The commission shall promptly cause such proposal to be published for public comment and shall hold a public hearing thereon. The commission shall promulgate final regulations, as required by subsection (a) of this section, within 180 days of the enactment of this act."

14-271-104. Penalties — Civil remedies.

(a)(1) Except as provided in subdivision (a)(2) of this subsection, any person who violates any provisions of this chapter shall be subject to a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation.

(2) Operators of underground pipeline facilities and excavators shall, upon violation of any applicable requirements of 49 C.F.R. Part 198, Subpart C, be subject to civil penalties not to exceed twenty-five thousand dollars ($25,000) for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed five hundred thousand dollars ($500,000) for any related series of violations.

(b)(1) Actions to recover the penalties provided for in this section shall be brought by the Attorney General of Arkansas, the county prosecutor, or the city attorney, at the request of any person, in the circuit court in the county in which the cause, or some part thereof, arose or in which the defendant has its principal place of business or resides.

(2) All penalties recovered in any such action shall be paid into the general fund of the state, county, or municipality that prosecutes the action.

(c) The Attorney General of Arkansas, the county prosecutor, or the city attorney shall, at the request of any person, bring an action in a

court of competent jurisdiction to enjoin any violation of 49 C.F.R. Part 198, Subpart C, committed by operators of underground pipeline facilities and excavators.

(d) Nothing in this chapter shall be construed to modify or repeal existing laws pertaining to the tort liability of local governments and their employees.

(e) This chapter does not affect any civil remedies for personal injury or property damage, including underground facilities, except as otherwise specifically provided for in this chapter.

(f) Neither the State Highway Commission, nor the Arkansas State Highway and Transportation Department, nor their officers, agents, employees, or contractors, nor the county judges or their road departments shall be subject to the provisions of this section.

History. Acts 1987, No. 600, § 12; 1991, No. 762, § 4; 1995, No. 727, § 2.

Amendments. The 1995 amendment substituted "two thousand five hundred dollars ($2,500)" for "one thousand dollars ($1,000)" in (a)(1); substituted "twenty-five thousand dollars ($25,000)" for "ten thousand dollars ($10,000)" in (a)(2); inserted "the county prosecutor, or the city attorney" in (b)(1) and (c); inserted a comma following "any person" in (b)(1); added "county, or municipality that prosecutes the action" in (b)(2); and added (f).

14-271-105. Ordinance or resolution adopting provisions.

(a) Every city of the first class, city of the second class, incorporated town, county, and rural water association, whether formed as a corporation, improvement district, or other legal entity, shall adopt an ordinance or other formal resolution no later than January 1, 1989, indicating whether the city, county, or rural water association desires to be subject to the provisions of the One Call membership requirements of § 14-271-107 of this chapter. However, every city of the first class, city of the second class, incorporated town, county, and rural water association which fails to adopt an ordinance or resolution indicating whether it desires to not be covered by the provisions of this chapter shall be subject to each and every provision of this chapter on and after January 1, 1989.

(b) Notwithstanding subsection (a) of this section, every city of the first class, city of the second class, incorporated town, county, and rural water association, whether formed as a corporation, improvement district, or other legal entity which operates an underground pipeline facility must become a member of the One Call Center unless otherwise provided herein.

(c) Notwithstanding the issuance of a resolution opting out of One Call membership under subsection (a) of this section, any city of the first class, city of the second class, incorporated town, county, and rural water association, whether formed as a corporation, improvement district, or other legal entity, shall remain subject to the provisions and requirements of §§ 14-271-110(a)(2) and 14-271-111 — 14-271-113.

History. Acts 1987, No. 600, § 4; 1991, No. 762, § 5; 1995, No. 727, § 3.

Amendments. The 1995 amendment inserted "the One Call membership requirements of § 14-271-107 of" in the first sentence of (a); substituted "every city of the first class, city of the second class" for "every first-class city, second-class city" in the second sentence of (a); substituted "every city of the first class, city of the second class" for "every city of the first-class, city of the second-class" in (b); and added (c).

14-271-106. Permittees to comply.

A permit issued pursuant to law authorizing excavation or demolition operation shall not be deemed to relieve a person from the responsibility for complying with the provisions of this chapter.

History. Acts 1987, No. 600, § 5.

14-271-107. Membership in One Call Center.

(a) All operators of underground facilities shall become members of the One Call Center; however, the commission may provide, by rule or by orders, for such exemptions or waivers concerning some or all of the requirements of membership as may appear reasonable and proper, as long as the exemption or waiver is not prohibited by statute or federal law.

(b) Additionally, other persons who own or control underground facilities or similar facilities may, upon application, become members of the One Call Center.

(c) Membership shall be evidenced by participation in, and payment for, the services furnished by the One Call Center.

History. Acts 1987, No. 600, § 8; 1989, No. 370, § 3; 1991, No. 762, § 6.

14-271-108. Notice to One Call Center — Changes — Files.

(a)(1) Each member operator having underground facilities, including those facilities that have been abandoned in place by the member operator but not yet physically removed and that can be identified, shall file a notice with the One Call Center that the member operator has underground facilities.

(2) The notice shall include a list of the geographic areas where facilities are located, providing as much specific information as reasonably possible, the name of the member operator, and the name, title, address, and telephone number of its representative designated to respond to notices of intent to excavate.

(b) Changes to any of the information contained in the notice filed in accordance with subsection (a) of this section shall be filed with the One Call Center within thirty (30) days of the change.

(c) The One Call Center shall file the notice submitted by member operators and shall maintain an index of the notices.

(d) Member operators shall maintain records and drawings of all changes and additions to their underground facilities.

History. Acts 1987, No. 600, § 6; 1995, No. 727, § 4.

Amendments. The 1995 amendment rewrote this section.

14-271-109. Notice to One Call Center — Exceptions.

(a) Compliance with notice requirements of § 14-271-112 is not required for:

(1) The moving of earth by tools manipulated only by human or animal power; or

(2) Any form of cultivation for agricultural purposes, digging for postholes on private property, farm ponds, land clearing, or other normal agricultural purposes which are not on a right-of-way of an operator; or

(3) Work by a public agency or its contractors on a preengineered project; or

(4) The opening of a grave in a cemetery; or

(5) Routine road work and general maintenance as performed in the right-of-way by state or county maintenance departments, but excluding any work or maintenance involving change of grade or clearing or widening drainage ditches.

(b)(1) Compliance with notice requirements of § 14-271-112 is not required of persons responsible for repair or restoration of service, or to ameliorate an imminent danger to life, health, property, or public safety.

(2) However, those persons shall give, as soon as practicable, oral notice of the emergency excavation or demolition to either the One Call Center or to each operator having underground facilities located in the area where the excavation or demolition is to be performed and request emergency assistance from each operator so identified in locating and providing immediate protection to its underground facilities. However, if such notice is given to an operator of an underground pipeline facility, the person giving the notification shall also notify the One Call Center as soon as is reasonably possible.

(3) An imminent danger to life, health, property, or public safety exists whenever there is a substantial likelihood that loss of life, health, or property will result before the procedures under § 14-271-112 can be fully complied with.

History. Acts 1987, No. 600, §§ 3, 10; 1989, No. 370, § 4; 1991, No. 762, § 7; 1995, No. 727, § 5.

Amendments. The 1995 amendment deleted former (a)(5) and (6), redesignating former (a)(7) as (a)(5); added "but excluding any work or maintenance involving change of grade or clearing or widening drainage ditches" to present (a)(5); deleted "for emergency excavation or demolition" following "persons responsible" in (b)(1); substituted "health, property, or public safety" for "health, or property" in (b)(1) and (3); and substituted "§ 14-271-112" for "§§ 14-271-107 and 14-271-112" in (b)(3).

14-271-110. Notifying operators of underground facilities — Identification of location.

(a)(1) Within four (4) working hours after receiving notification of intent to excavate or demolish, the One Call Center shall in turn notify all member operators of underground facilities in the affected area of the proposed activity.

(2)(A) Unless otherwise agreed to between the excavators and the operator, within two (2) working days after notification from either the One Call Center or the person proposing the activity, the operator shall identify the approximate location of the facilities by field-marking on the surface by paint, dye, stakes, or any other clearly visible marking which designates the horizontal course of the facilities.

(B) If the operator has no facilities in the area, the operator shall so inform the person proposing the activity, either by contacting that person or by leaving such information at the site.

(3) When an underground facility is being located, the operator shall furnish the excavator information which identifies the approximate center line, approximate or estimated depth, when known, and dimensions of the underground facility.

(4)(A) When excavating within the approximate location of an underground facility, the excavator shall uncover the facility using a method approved by the operator.

(B) No power-driven tools or equipment shall be used without the express approval of the operator.

(b) Subject to the provisions of § 14-271-112(b) governing the duration of a locate request, when projects are delayed or are lengthy in time and location, the operator and the excavator shall establish and maintain coordination regarding location, marking, and identification of the facilities until all excavation or demolition is completed.

History. Acts 1987, No. 600, § 9; 1995, No. 727, § 6.

Amendments. The 1995 amendment inserted "member" in (a)(1); added (a)(2)(B); inserted "the" preceding "operator" in present (a)(2)(A); rewrote (a)(3) and (4); in (b), added "Subject to ... a locate request" and inserted "the" preceding "excavator"; substituted "this chapter" for "this section" in (c); and transferred former (c) to § 14-271-102(1).

14-271-111. Color code for marking facility and excavation or demolition locations.

(a)(1) If the approximate location of an underground facility is marked with temporary markers, stakes, or other physical means, the operator shall follow the color coding prescribed as follows:

FACILITY AND TYPE OF PRODUCT	SPECIFIC GROUP IDENTIFYING COLOR
Electric power distribution and transmission	Safety red

FACILITY AND TYPE OF PRODUCT	SPECIFIC GROUP IDENTIFYING COLOR
Municipal electric systems	Safety red
Gas distribution and transmission	High visibility safety yellow
Oil distribution and transmission	High visibility safety yellow
Dangerous materials' product lines	High visibility safety yellow
Telephone and telegraph systems	Safety alert orange
Cable television	Safety alert orange
Police and fire communications	Safety alert orange
Water systems	Safety precaution blue
Sewer systems	Safety green.

(2) In addition to the foregoing, all underground facilities installed after January 1, 1996, shall be permanently marked with tracing wires of appropriate durability or in other manner which will enable the operator to trace the specific course of the underground facility.

(b) Unless otherwise agreed by all affected operators, persons engaged in excavation or demolition shall mark the proposed area of work with stakes, flags, posts, or painted or chalked lines that are white in color and are clearly visible.

(c) Any person who moves, removes, alters, conceals, or defaces any markings required under this chapter before the demolition or excavation work is commenced shall be subject to the penalties contained in § 14-271-104.

History. Acts 1987, No. 600, § 9; 1995, No. 727, § 7.

Amendments. The 1995 amendment added (a)(2), (b) and (c); and substituted "Dangerous materials' product line" for "Dangerous materials, product line" in present (a)(1).

14-271-112. Notice of intent to excavate or demolish.

(a) Except as provided in § 14-271-109, no person may engage in excavation or demolition activities without having first notified the One Call Center in accordance with the provisions listed in this section.

(b)(1) Each person responsible for any excavation or demolition operation shall serve written or telephonic notice of intent to excavate or demolish at least two (2), but not more than ten (10), full working days before commencing this activity.

(2) The notice of intent shall be delivered to the One Call Center.

(3)(A) The notice given by this section shall be effective for a period of twenty (20) working days from the date that the notice was given.

(B) If the work to be performed is not completed within this period, or if the location markings have been removed or are no longer visible, the person engaging in the demolition or excavation activity shall reinitiate the notice procedure set forth in this section.

(c) The written or telephonic notice of intent required by subsection (b) of this section shall contain the name of the person notifying the One Call Center, the name, address, and telephone number of the person responsible for the excavation or demolition, the starting date, antici-

pated duration and type of excavation or demolition operation to be conducted, the specific location of the proposed excavation or demolition, and whether or not explosives are anticipated to be used.

(d) The One Call Center shall, as soon as practicable after receiving such notice, provide persons giving notice of an intention to engage in an excavation activity the names of any member operators of underground facilities to whom the notice will be transmitted.

(e)(1) An adequate record of notifications to the One Call Center shall be maintained by the One Call Center.

(2) A copy of the record shall be furnished to the persons giving notice of intent to excavate or demolish if requested.

(3) The records shall be maintained by the One Call Center for at least three (3) years.

(f) Nothing in this section shall be construed to obligate the One Call Center to transmit a notice of intent to excavate for any operator that is not a member of the One Call Center.

History. Acts 1987, No. 600, § 7, 1991, No. 762, § 8; 1995, No. 727, § 8.

Amendments. The 1995 amendment rewrote (a) and (b); deleted "the operator or" preceding "the One Call Center" in (c); substituted "member" for "participating" in (d); added the subdivision designations in (e); substituted "notifications to the One Call Center" for "the notification" in (e)(1); and added (f).

14-271-113. Notice of damage required — Exception.

(a) Except as provided by subsection (b) of this section, each person responsible for any excavation or demolition operation that results in any damage to an underground facility shall notify, immediately upon discovery of the damage, the operator of the facility of the location and nature of the damage and shall allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of the facility.

(b) Each person responsible for any excavation or demolition operation that results in damage to an underground facility permitting the escape of any flammable, toxic, or corrosive gas or liquid shall notify the operator and police and fire departments immediately upon discovery of the damage and take any other action reasonably necessary to protect persons and property and to minimize the hazards until arrival of the operator's personnel or police and fire departments.

History. Acts 1987, No. 600, § 11; 1995, No. 727, § 9.

Amendments. The 1995 amendment, in (b), substituted "operator and police and fire departments" for "operator, police, and fire departments" and deleted the comma following "damage", and deleted former (c).

14-271-114. Operators of underground pipeline facilities.

In addition to the provisions of this chapter, all operators of underground pipeline facilities are required to comply with all applicable federal statutes and regulations pertaining to pipeline safety and damage prevention.

History. Acts 1995, No. 727, § 10.

14-271-115. No responsibility for nonmember facilities.

Neither the One Call Center, nor any entity operating the One Call Center, nor any member of the One Call Center shall be responsible for locating nonmember underground utility facilities, or for advising or otherwise warning of the possibility of the existence of underground utility facilities other than those owned or operated by members of the One Call Center.

History. Acts 1995, No. 727, § 11.

CHAPTER 272

RURAL FIRE DEPARTMENTS STUDY COMMISSION

SECTION.
14-272-101. Creation.
14-272-102. Members — Compensation.
14-272-103. Funding study — Findings.
14-272-104. Biennial reports.

A.C.R.C. Notes. Acts 1991, No. 1032, § 4, provided, "The Rural Fire Department Study Commission shall submit its report and recommendations together with any proposed legislation to the Joint Interim Committee on Insurance and Commerce and the Joint Interim Committee on City, County and Local Affairs on or before September 1, 1992."

Effective Dates. Acts 1997, No. 183, § 8: Feb. 17, 1997 Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Insurance and Commerce and in its place established the House Interim Committee and Senate Interim Committee on Insurance and Commerce; that various sections of the Arkansas Code refer to the Joint Interim Committee on Insurance and Commerce and should be corrected to refer to the House and Senate Interim Committees on Insurance and Commerce; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 250, § 258: Feb. 24, 1997 Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. There-

fore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governer [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 385, § 9: Mar. 6, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the original ten subject matter joint interim committees of the General Assembly and in their place established House interim committees and Senate interim committees; that as a result, various sections of the Arkansas Code that refer to the joint interim committees should now refer to the House and Senate interim committees; that this act so provides; and that this act should go into effect as soon as possible in order to make those sections of the Arkansas Code compatible. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1354, § 51. Apr. 14, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act affects the method of selection of alternate members of the Legislative Council and Legislative Joint Auditing Committee and that this act is immediately necessary for proper continuity and efficiency in State government. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

14-272-101. Creation.

(a) There is hereby created the Rural Fire Departments Study Committee of the General Assembly, to be composed of:

(1) Two (2) members of the House Interim Committee on Insurance and Commerce to be appointed by the chairman of the committee;

(2) One (1) member of the Senate Interim Committee on Insurance and Commerce to be appointed by the chairman of the committee;

(3) One (1) member of the House Interim Committee on Agriculture and Economic Development to be appointed by the chairman of the committee;

(4) One (1) member of the House Interim Committee on City, County and Local Affairs to be appointed by the chairman of the committee;

(5) One (1) member of the Senate Interim Committee on City, County and Local Affairs to be appointed by the chairman of the committee;

(6) Two (2) members of the House of Representatives, to be appointed by the Speaker of the House of Representatives; and

(7) Two (2) members of the Senate, to be appointed by the President Pro Tempore of the Senate.

(b) The following shall be nonvoting ex officio members of the committee:

(1) One (1) member representing the Arkansas Farm Bureau Federation, to be recommended by the Arkansas Farm Bureau Federation and appointed by the Speaker of the House of Representatives;

(2) One (1) member representing the Independent Insurance Agents of Arkansas, to be recommended by the Independent Insurance Agents of Arkansas and appointed by the Speaker of the House of Representatives;

(3) One (1) member representing the County Judges Association, to be recommended by the County Judges Association and appointed by the Speaker of the House of Representatives;

(4) One (1) member representing the Arkansas Rural Fire Fighters Association, to be recommended by the Arkansas Rural Fire Fighters Association and appointed by the Speaker of the House of Representatives;

(5) One (1) member representing the Arkansas Council of Professional Fire Fighters, to be recommended by the Arkansas Council of Professional Fire Fighters and appointed by the Speaker of the House of Representatives;

(6) One (1) member representing the Arkansas Municipal League, to be recommended by the Arkansas Municipal League and appointed by the Speaker of the House of Representatives;

(7) One (1) member appointed by the Speaker of the House of Representatives to represent the Arkansas State Firefighters' Association.

(c) The Speaker of the House of Representatives shall select one (1) of the Representatives as cochairman, and the President Pro Tempore of the Senate shall select one (1) of the Senators as cochairman.

(d)(1) A member of the committee shall continue to serve on the committee until he or she no longer wishes to serve or no longer qualifies to represent or is a member of the committee, body, or organization which he or she was appointed to represent.

(2) Any vacancy on the committee shall be filled by the original appointing authority with another qualifying member of the committee, body, or organization.

History. Acts 1991, No. 1032, § 1; 1993, No. 231, § 1, 1995, No. 489, § 1; 1997, No. 183, § 1, 1997, No. 385, § 2; 1997, No. 1264, § 1.

A.C.R.C. Notes. The 1997 amendment to this section by No. 1264 contains grammatical or stylistic errors. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the language.

Pursuant to § 1-2-207, this section is set out above as amended by Acts 1997, No. 1264.

Acts 1997, No. 183, amended (a)(1) to read as follows: "(a)(1) One (1) member of the Senate Interim Committee on Insurance and Commerce appointed by the charirman of that committee, and two (2) members of the House Interim Committee on Insurance and Commerce appointed by the chairman of that committee."

Acts 1997, No. 385, amended (a)(1) and (2) to read as follows: "(a)(1) Two (2) members of the House Interim Committee on Insurance and Commerce to be appointed by the chair of that committee, and one (1)

member of the Senate Interim Committee on Insurance and Commerce to be appointed by the chair of that committee;

"(2) Two (2) members of the House Interim Committee on City, County and Local Affairs to be appointed by the chair of that committee, and one (1) member of the Senate Interim Committee on City, County and Local Affairs to be appointed by the chair of that committee."

Amendments. The 1993 amendment substituted "Joint Interim Committee on Insurance and Commerce" for "Insurance and Commerce Committee" twice in (a)(1); substituted "Joint Interim Committee on City, County, and Local Affairs" for "City, County, and Local Affairs Committee" twice in (a)(2); inserted "of Representatives" following "Speaker of the House" in (a)(5)-(a)(10) and (b); added (c); and made minor punctuation changes.

The 1995 amendment substituted "sixteen (16) members" for "fifteen (15) members" in (a); substituted "Two (2) members" for "One (1) member" in (a)(4); and made stylistic changes.

The 1997 amendment rewrote this section.

14-272-102. Members — Compensation.

(a) Members of the commission, other than the legislative members, shall serve without compensation but may be reimbursed for expenses and travel in the maximum amounts prescribed by the Department of Finance and Administration for state employees.

(b)(1) Legislative members of the commission shall be entitled to per diem and mileage at the same rate authorized by law for attendance at meetings of interim committees of the General Assembly.

(2) Legislative members of the commission may receive payment for per diem and mileage from appropriated funds for the interim committees which they represent, for the interim committees on which they serve, or from appropriated funds for travel and expenses for the house of the General Assembly in which they serve.

History. Acts 1991, No. 1032, § 2; 1993, No. 231, § 2; 1997, No. 250, § 90; 1997, No. 1264, § 2; 1997, No. 1354, § 31.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 1997, No. 1354.

Acts 1997, No. 250 amended subsection (a) to read as follows: "(a) Members of the commission, other than the legislative members, shall serve without compensation but may be reimbursed for expenses in accordance with § 25-16-901 et seq."

Acts 1997, No. 1264 amended this section to read as follows: "Members of the committee, other than ex officio members, shall be entitled to per diem and mileage at the same rate authorized by law for attendance at meetings of interim committees of the General Assembly and such per diem and mileage shall be paid from funds appropriated for payment of per diem and mileage of members of interim committees."

Amendments. The 1993 amendment added (b)(2).

The 1997 amendment substituted "interim committees" for "joint interim committees" in (b)(1) and (b)(2).

14-272-103. Funding study — Findings.

(a)(1) The Rural Fire Departments Study Committee of the General Assembly shall conduct an in-depth study of the funding of rural fire departments to determine the sources and whether it is sufficient to provide adequate fire protection in rural areas.

(2) The committee shall study and make recommendations for a permanent source of funding for these rural fire departments.

(b) The committee shall also designate rural areas that do not have adequate fire protection and make recommendations as to the needs of these areas.

History. Acts 1991, No. 1032, § 3; 1997, No. 1264, § 3.

Amendments. The 1997 amendment substituted "Committee of the General Assembly" for "Commission" in (a)(1); and substituted "committee" for "commission" in (a)(2) and (b).

14-272-104. Biennial reports.

The committee shall submit a biennial report and its recommendations for any proposed legislation to the House and Senate Interim Committees on Insurance and Commerce, the House and Senate Interim Committees on City, County, and Local Affairs, and the House Interim Committee on Agriculture and Economic Development of the Arkansas General Assembly on or before September 1 of each even-numbered year.

History. Acts 1993, No. 231, § 3; 1997, No. 183, § 2; 1997, No. 385, § 3; 1997, No. 1264, § 4.

Amendments. The 1997 amendments by Nos. 183 and 385 substituted "House and Senate Interim Committees" for "Joint Interim Committee" twice.

The 1997 amendment by No. 1264 rewrote this section.

CHAPTERS 273-280

[Reserved]

SUBTITLE 17. PUBLIC HEALTH AND WELFARE IMPROVEMENT DISTRICTS

CHAPTER 281

GENERAL PROVISIONS

[Reserved]

CHAPTER 282

AMBULANCE SERVICE IMPROVEMENT DISTRICTS

SECTION.
14-282-101. Purpose.
14-282-102. Petition for improvement district.
14-282-103. Notice of petition.
14-282-104. Hearing and appeal — Appointment of board of commissioners — Purpose of petition.
14-282-105. Board of commissioners — Organization.
14-282-106. Board of commissioners — Liability.
14-282-107. Formation of plans — Assessment generally.
14-282-108. Assessment — Notice and hearing of assessment.
14-282-109. Assessment — Annual reassessment.
14-282-110. Assessment — Entry upon board records — Lien.

SECTION.
14-282-111. Assessment — Filing and collection.
14-282-112. Assessment — Time for payment — Failure to pay.
14-282-113. Payments by district — Public proceedings and transactions — Filing of report.
14-282-114. Issuance of negotiable notes.
14-282-115. Dissolution of district.
14-282-116. Advancement on docket — Appeals.
14-282-117. Fees of county collector and county clerk.

Preambles. Acts 1991, No. 457 contained a preamble which read: "Whereas, the present law regarding the establishment of ambulance service districts requiring the district boundaries to be coextensive in area with county or county judicial district boundaries is too restrictive to allow needed flexibility for the various quorum courts of the State to set the areas to be served by the proposed ambulance service district;

"Now therefore ....."

Effective Dates. Acts 1975 (Extended Sess., 1976), No. 1221, § 19: Feb. 12, 1976. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that there are inadequate ambulance facilities and services in many rural areas, and that the value of real property in many areas is greatly diminished due to the lack of such facilities and services, and that there is an urgent need to relieve this condition. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its passage and approval."

Acts 1987, No. 1011, § 19: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case Ricarte v. State, CR 86-31, a question has arisen over the validity of Act 1221 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 922, § 28: July 7, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

14-282-101. Purpose.

It is the purpose and intent of this chapter to authorize the establishment, and to prescribe the procedure for the establishment, of improvement districts for the purpose of providing ambulance services to residents of the districts and to prescribe the procedure for assessing the property in the district to finance the services.

History. Acts 1975 (Extended Sess. 1976), No. 1221, § 1; A.S.A. 1947, § 20-2001; reen. Acts 1987, No. 1011, § 1.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1011, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-282-102. Petition for improvement district.

(a) Upon the petition of a majority in value and area of the owners of real property in any designated area, it shall be the duty of the county court to lay off into an improvement district the territory described in the petition and to name three (3) commissioners of the district.

(b) The purpose of the district shall be for the acquiring of appropriate vehicles and equipment and the maintaining and operating of ambulance services for the use and benefit of the property holders within the district, and it is realized that the ambulance services would be a benefit to all the real property located in the district.

(c) The petition for, and the court order creating, the district shall designate the maximum amount that may be expended for vehicles, equipment, personal services, and other expenses of providing ambulance services in the district during any one (1) year.

(d) Any number of identical petitions may be circulated. Identical petitions with identical names may be filed at any time until the county court acts.

(e)(1)(A) An ambulance service district that is composed of an area within a county as established by the quorum court of the county may be created by ordinance of the quorum court. The ordinance shall designate the area to be served. However, in no event shall the area include less than a whole precinct and all precincts must be contiguous. The ordinance shall also set forth the method the ambulance service district shall assess the persons residing therein or the property owners having property located therein.

(B) An assessment of up to five (5) mills may be levied by the quorum court in the ambulance service district area, provided that the assessment is approved by at least a majority of the qualified electors voting on the issue at an election called for that purpose.

(C) The quorum court shall establish the date of the election which may be the same date as the general election, and only the qualifying electors residing within the boundaries of the district shall be entitled to vote at such election. The cost of the election shall be borne by the county.

(2) The ordinance shall further specify that the matter shall be referred to the electors of the affected area not less than sixty (60) days and not more than ninety (90) days after the passage of the ordinance and before any taxes are levied, assessed, or collected.

(3) In the event the referred ordinance is approved, it shall be in full force and effect upon certification of the election results by the county election commission. An ambulance service district created by this procedure shall be exempt from the assessment procedures set out in

this chapter. The taxes collected pursuant to the ordinance shall be administered by the county as an enterprise fund, but shall be levied and collected as county taxes.

(4) The provisions of subsection (e) of this section shall not apply to existing nonprofit volunteer ambulance services that provide ambulance and paramedic services in a general but undefined area of the state and which have been in existence for more than five (5) years.

History. Acts 1975 (Extended Sess. 1976), No. 1221, §§ 2, 3; A.S.A. 1947, §§ 20-2002, 20-2003; reen. Acts 1987, No. 1011, §§ 2, 3; Acts 1989, No. 498, § 1; 1991, No. 457, § 1; 1991, No. 922, § 21.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1011, §§ 2, 3. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-282-103. Notice of petition.

(a) It shall be the duty of the county clerk to give notice of the filing of the petition describing the territory to be affected and calling upon all persons who wish to be heard upon the question of the establishment of the district to appear before the county court on a day to be fixed in the notice.

(b) The notice shall be published one (1) time a week for two (2) consecutive weeks in some newspaper published and having a bona fide circulation in the county where the lands affected are situated.

(c) This notice may be in the following form:

"Notice is hereby given that a petition has been filed praying for the formation of an improvement district for the purpose of ..... Said petition is on file at the office of the County Clerk of ..... County, where it is open to inspection. All persons desiring to be heard on the question of formation of said district will be heard by the County Court at ..m., on the ..... day of ....., 19.... The following lands are affected: (Here give description of lands affected; the same may be described by using the largest subdivisions possible.)

.....
County Clerk"

History. Acts 1975 (Extended Sess. 1976), No. 1221, § 3; A.S.A. 1947, § 20-2003; reen. Acts 1987, No. 1011, § 3.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1011, § 3. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Cross References. Notice on formation of improvement districts, § 14-86-301 et seq.

14-282-104. Hearing and appeal — Appointment of board of commissioners — Purpose of petition.

(a) On the day named in the notice, it shall be the duty of the county court to meet and to hear the petition and to determine whether those signing the petition constitute the majority in value and area.

(b)(1) If the county court determines that a majority in value and area have petitioned for the establishment of the district, it shall enter its judgment laying off the district as defined in the petition and appointing the commissioners who are resident property holders in the district, all of whom shall be citizens of integrity and good business ability.

(2) If it finds that a majority has not signed the petition, it shall enter its order denying it.

(c)(1) The commissioners shall serve without compensation and shall be appointed to serve for terms of one (1), two (2), and three (3) years, respectively.

(2) The length of the term of each commissioner shall be stated in the order of the county court making the appointment.

(3) As the terms of the commissioners expire, the county court shall appoint successors to hold office for a term of three (3) years.

(4) The county court may reappoint a commissioner whose term is expiring.

(5) In case of vacancy on the board of commissioners after the commissioners have organized, the county court shall appoint some resident property holder as his successor, who shall qualify in like manner and within a like time.

(6) The commissioners shall serve until their successors are appointed and qualified.

(d) Any petitioner or any opponents of the petition may appeal from the judgment of the county court creating or refusing to create the district, but the appeal must be taken and perfected within thirty (30) days. If no appeal is taken within that time, the judgment creating the district shall be final and conclusive upon all persons.

(e) The commissioners are authorized to acquire such vehicles, equipment, and other facilities and to employ such personnel as they deem necessary to provide adequate ambulance services to the residents of the district.

(f) The purpose for which the district is to be formed shall be stated in the petition, and the judgment establishing the district shall give it a name which shall be descriptive of the purpose. The district shall also receive a number to prevent its being confused with other districts for similar purposes.

History. Acts 1975 (Extended Sess. 1976), No. 1221, §§ 2-4; A.S.A. 1947, §§ 20-2002 — 20-2004; reen. Acts 1987, No. 1011, §§ 2-4.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1011, §§ 2-4. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-282-105. Board of commissioners — Organization.

(a) Within thirty (30) days after their appointment, the commissioners shall take and file their oaths of office with the county clerk, in which they shall swear to support the Constitution of the United States and the Constitution of the State of Arkansas, to faithfully discharge their duties as commissioners and that they will not be interested, directly or indirectly, in any contract let by the board. Any commissioner failing to file the oath within the period shall be deemed to have declined the office, and the county court shall appoint some resident property holder as his successor who shall qualify in like manner within a like time.

(b) The board shall organize by electing one (1) of its members chairman, and it shall select a secretary.

(c) The board may also employ such personnel as it deems best and fix their compensation.

(d) Each improvement district shall be a body corporate, with power to sue and be sued, and it shall have a corporate seal.

(e) The board shall also select some solvent bank or trust company as the depository of its funds, exacting of the depository a bond in an amount equal to the amount of money likely to come into its hands.

History. Acts 1975 (Extended Sess. 1976), No. 1221, § 4; A.S.A. 1947, § 20-2004; reen. Acts 1987, No. 1011, § 4.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1011, § 4. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-282-106. Board of commissioners — Liability.

No member of the board of improvement shall be liable for any damages unless it shall be made to appear that he acted with a corrupt and malicious intent.

History. Acts 1975 (Extended Sess. 1976), No. 1221, § 13; A.S.A. 1947, § 20-2013; reen. Acts 1987, No. 1011, § 13.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1011, § 13. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-282-107. Formation of plans — Assessment generally.

(a) Upon the qualification of the commissioners, they shall form plans for the providing of ambulance improvements they intend to make and the property and equipment they intend to purchase.

(b) They shall thereupon appoint three (3) assessors to assess the annual benefits which will accrue to the real property within the district from the providing of ambulance services and shall fix their compensation. The assessors shall take an oath that they will well and

truly assess all annual benefits that will accrue to the landowners of the improvement district by the providing of ambulance services.

(c) The assessors shall thereupon proceed to assess the annual benefits to the lands within the improvement district. They shall inscribe in a book each tract of land and shall extend opposite each tract of land the amount of annual benefits that will accrue each year to the land by reason of the services.

(d) In case of any reassessment, the reassessment shall be advertised and equalized in the same manner as provided in this section for making the original assessment. The owners of all property whose assessment has been raised shall have the right to be heard and to appeal from the decision of the assessors, as in the original assessment.

(e) The assessors shall place opposite each tract the name of the supposed owner, as shown by the last county assessment, but a mistake in the name shall not void the assessment, and the assessors shall correct errors which occur in the county assessment list.

(f) The commissioners shall have the authority to fill any vacancy in the position of assessor and the assessors shall hold their office at the pleasure of the board.

History. Acts 1975 (Extended Sess. 1976), No. 1221, § 5; A.S.A. 1947, § 20-2005; reen. Acts 1987, No. 1011, § 5.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1011, § 5. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-282-108. Assessment — Notice and hearing of assessment.

(a) The assessment shall be filed with the county clerk of the county, and the secretary of the board shall thereupon give notice of its filing by publication one (1) time a week for two (2) weeks in a newspaper published and having a bona fide circulation in the county. This notice may be in the following form:

"Notice is hereby given that the assessment of annual benefits of ..... District Number ... . has been filed in the office of the County Clerk of ..... County, where it is open for inspection. All persons wishing to be heard on said assessment will be heard by the assessors of said district in the office of the County Clerk between the hours of 1 P.M. and 4 P.M., at ....., on the ..... day of ..... 19...."

(b) On the day named by the notice, it shall be the duty of the assessors to meet at the place named as a board of assessors and to hear all complaints against the assessment and to equalize and adjust the assessment. Their determination shall be final unless suit is brought in the chancery court within thirty (30) days to review it. If the board is unable to hear all complaints between the hours designated, they shall adjourn over from day to day until all parties have been heard.

History. Acts 1975 (Extended Sess. 1976), No. 1221, § 6; A.S.A. 1947, § 20-2006; reen. Acts 1987, No. 1011, § 6.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1011, § 6. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-282-109. Assessment — Annual reassessment.

(a) The commissioners shall one (1) time a year order the assessors to reassess the annual benefits of the district, provided there have been improvements made or improvements destroyed or removed from one (1) or more tracts of land in the district, making it necessary to have the annual benefits revised.

(b) Whereupon, it shall be the duty of the assessors to reassess the benefits of the district, and the annual benefits assessed may be raised or lowered as conditions of the property change.

(c) However, the annual benefits extended against any piece of property shall not be increased from the annual benefits originally extended unless improvements are made to the land that will be benefited by the ambulance services provided by the improvement district.

History. Acts 1975 (Extended Sess. 1976), No. 1221, § 7; A.S.A. 1947, § 20-2007; reen. Acts 1987, No. 1011, § 7.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1011, § 7. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-282-110. Assessment — Entry upon board records — Lien.

(a) The board of commissioners of the improvement district shall at the time that the annual benefit assessment is equalized, or at any time thereafter, enter upon its records an order which shall have all the force of a judgment, providing that there shall be assessed upon the real property of the district and collected annually, the annual benefit assessment set opposite each tract of land described. The annual benefit is to be paid by the owner of the real property in the improvement district, payable as provided in the order.

(b) The uncollected annual benefit assessment as extended shall be a lien upon the real property in the district against which it is extended from the time the assessment is levied. This lien shall be entitled to preference over all demands, executions, encumbrances, or liens whensoever created and shall continue until the assessment, with any penalty and costs that may accrue thereon, shall have been paid.

(c) Notice of the amount due shall be given to each landowner, if he fails to pay his assessment on or before the third Monday in April, at his last known address by mail.

(d)(1) The remedy against the annual benefit assessment shall be by suit in chancery, and the suits must be brought within thirty (30) days from the time that the notice is mailed.

(2) On the appeal, the presumption shall be in favor of the legality of the annual benefit assessment.

History. Acts 1975 (Extended Sess. 1976), No. 1221, § 8; A.S.A. 1947, § 20-2008; reen. Acts 1987, No. 1011, § 8.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1011, § 8. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-282-111. Assessment — Filing and collection.

(a) The original assessment record or any reassessment record shall be filed with the county clerk, whose duty it shall be to extend the annual benefit assessment annually upon the tax books of the county until the improvement district is dissolved. It shall then be the duty of the collector to collect each year the annual benefit assessment extended upon the book along with the other taxes, and the taxes shall be paid by the collector over to the depository of the improvement district at the same time that he pays over the county funds.

(b)(1) If there is any change in the annual benefits assessed, a certified copy of the revised assessment shall be filed with the county clerk who shall extend the revised assessment annually upon the tax books until a new assessment is made, which shall be extended upon the tax books in like manner. The power to reassess and extend the assessment upon the tax books shall be a continuing power as long as the district continues to exist. It shall be the duty of the county collector to collect the taxes so extended.

(2) In lieu of filing the reassessment, the assessors may make the changes in the assessments in red ink on the assessment already on file, or the assessment record may contain many columns at the head of which the year shall be designated and, in the column the new annual benefits may be shown in red ink which will indicate any increase or decrease in the original annual benefits extended. When the change is made, a red ink line shall be drawn through the figures showing the original annual benefits extended.

History. Acts 1975 (Extended Sess. 1976), No. 1221, § 9; A.S.A. 1947, § 20-2009; reen. Acts 1987, No. 1011, § 9.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1011, § 9. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-282-112. Assessment — Time for payment — Failure to pay.

(a) All annual benefits extended and levied under the terms of this chapter shall be payable between the third Monday in February and the third Monday in April of each year.

(b)(1) If any annual benefit assessments levied by the board pursuant to this chapter are not paid at maturity, the collector shall not

embrace the assessments in the taxes for which he shall sell the lands, but he shall report the delinquencies to the board of commissioners of the improvement district, who shall add to the amount of the annual benefit assessment a penalty of ten percent (10%).

(2) The board of commissioners shall enforce the collection by chancery proceedings in the chancery court of the county in the manner provided by §§ 14-121-426 — 14-121-432.

(3) The owner of property sold for taxes thereunder shall have the right to redeem it at any time within two (2) years from the time when his lands have been stricken off by the commissioner making the sale.

History. Acts 1975 (Extended Sess. 1976), No. 1221, § 10; A.S.A. 1947, § 20-2010; reen. Acts 1987, No. 1011, § 10.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1011, § 10. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-282-113. Payments by district — Public proceedings and transactions — Filing of report.

(a) The depository shall pay out no money except upon the order of the board and upon a voucher check signed by at least two (2) of the commissioners. Every voucher check shall state upon its face to whom payable, the amount, and the purpose for which it is used. All voucher checks shall be dated and shall be numbered consecutively in a record to be kept by the board of the number and amount of each.

(b) All proceedings and transactions of the board shall be a matter of public record and shall be open to the inspection of the public.

(c) The board of commissioners shall file with the county clerk in January of each year a certified itemized report showing all moneys received, the date of receipt, the source from which received, all moneys paid out, date paid, to whom paid, and for what purpose during the preceding year, together with an itemized list of all delinquent taxes showing owner, description of property, years for which the tax is delinquent, and amount of total delinquency.

History. Acts 1975 (Extended Sess. 1976), No. 1221, § 11; A.S.A. 1947, § 20-2011; reen. Acts 1987, No. 1011, § 11.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1011, § 11. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-282-114. Issuance of negotiable notes.

(a) In order to acquire equipment and to do the work, the board may issue the negotiable notes of the improvement district signed by the members of the board and bearing a rate of interest not exceeding six percent (6%) per annum and may pledge and mortgage a portion of future annual benefit assessments as collected for the payment thereof.

(b) Any petitions for the creation of a district and the court order creating a district, shall limit the total amount of notes that may be outstanding at any one (1) time to twenty thousand dollars ($20,000).

(c) The improvement district shall have no authority to issue bonds.

History. Acts 1975 (Extended Sess. 1976), No. 1221, § 12; A.S.A. 1947, § 20-2012; reen. Acts 1987, No. 1011, § 12.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1011, § 12. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-282-115. Dissolution of district.

(a) The improvement district shall continue to exist for the purpose of operating and maintaining ambulance services until such time as the owners of a two-thirds (⅔) majority in value of the real property within the district petition the county court for dissolution of the improvement district.

(b) Publication of the petition for dissolution, as provided for in creating the improvement district, shall be made. If the county court finds that a two-thirds (⅔) majority in value of the real property in the district have petitioned for the dissolving of the district, the district shall be dissolved.

(c) Parties for or against the dissolution shall have the same right of appeal as in the creation of the district.

History. Acts 1975 (Extended Sess. 1976), No. 1221, § 14; A.S.A. 1947, § 20-2014; reen. Acts 1987, No. 1011, § 14.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1011, § 14. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-282-116. Advancement on docket — Appeals.

(a) All cases involving the validity of the districts or the annual benefit assessments and all suits to foreclose the lien of annual benefit assessments shall be deemed matters of public interest, and shall be advanced and disposed of at the earliest possible moment.

(b) All appeals therefrom must be taken and perfected within thirty (30) days.

History. Acts 1975 (Extended Sess. 1976), No. 1221, § 15; A.S.A. 1947, § 20-2015; reen. Acts 1987, No. 1011, § 15.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1011, § 15. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

14-282-117. Fees of county collector and county clerk.

The collector of taxes in any county, in collecting annual benefit assessments in any district created under this chapter, shall deduct one percent (1%) of the annual benefit assessments or taxes so collected and retain one-half of the one percent (½ of 1%) as the fee of the collector for collecting the assessments or taxes and pay over the remaining one-half (½) of the one percent (1%) of the assessments or taxes collected to the county clerk of the county as the fee of the county clerk for extending on the assessment records of the county the annual benefit assessments or taxes.

History. Acts 1975 (Extended Sess. 1976), No. 1221, § 16; A.S.A. 1947, § 20-2016; reen. Acts 1987, No. 1011, § 16.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1011, § 16. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

CHAPTER 283

MOSQUITO ABATEMENT DISTRICTS

SECTION.
14-283-101. Petition for special election.
14-283-102. Procedures for special elections.
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14-283-111. Expenditures — Public proceedings and transactions — Filing of report.
14-283-112. Bonds and certificates of indebtedness generally.
14-283-113. Bonds — Security — Liability of board for bonds and contracts.
14-283-114. Bonds — Refunding.
14-283-115. Bonds — Tax exemption.
14-283-116. Dissolution of district.

Effective Dates. Acts 1979, No. 530, § 20: Mar. 22, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is urgent need for legislation to grant authority to establish mosquito abatement districts in certain areas of the State and to provide a procedure for financing the activities of such districts; that this Act is designed to grant such authority and to prescribe the procedure therefor and to authorize such districts to issue bonds to fund the activities of the district; and that this Act should be given effect immediately to enable the electors in various areas to immediately take appropriate steps to establish such districts. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

14-283-101. Petition for special election.

(a) When petitions are filed with the county court of any county containing the signatures of ten percent (10%) or more of the qualified electors of all or any defined part of any county, or all or any defined part of any city, as determined by the number of votes cast by the qualified electors of the county, city, or designated portion thereof, for all candidates for Governor at the last preceding general election, requesting the establishment of a mosquito abatement district in the county or a designated portion of the county or in the city or designated portion of the city and requesting that assessed benefits be made on the property located in the district to finance the operation of the district, the county court shall call a special election in the county, city, or designated area of the city to determine whether a mosquito abatement district shall be established for the area.

(b) Petitions filed pursuant to subsection (a) of this section shall specifically define the area proposed to be included in a mosquito abatement district and shall specify the maximum assessed benefits or taxes which may be levied against property within the district for the support of the district. In no event shall the assessed benefits in any district exceed an amount equal to one percent (1%) of the assessed valuation of real property in the district.

(c) The quorum court of the county may on its own motion enact an ordinance directing the county court to call a special election in the county, city, or designated area of the city to determine whether a mosquito abatement district shall be established for the area.

History. Acts 1979, No. 530, §§ 1, 2; A.S.A. 1947, §§ 82-1201, 82-1202; Acts 1989, No. 661, § 1.

14-283-102. Procedures for special elections.

(a) The special election called by the county court to submit the question of the establishment and financing of a mosquito abatement district to the electors of the proposed district shall be held within ninety (90) days after the filing of the petitions requesting the election.

(b) At the election, the question of establishing and financing the district shall be placed on the ballot in substantially the following form:

"FOR the establishment of a mosquito abatement district in ..... (county), ... (city), ... (designated area) and the establishment of assessed benefits on real property in the district in an amount not to exceed ten percent (10%) of the assessed valuation of real property in the district, to finance the district ..... ☐

AGAINST the establishment of a mosquito abatement district in ..... (county), ... (city), ... (designated area) and the establishment of assessed benefits on real property in the district in an amount not to exceed ten percent (10%) of the assessed valuation of real property in the district to finance the district ..... ☐."

History. Acts 1979, No. 530, § 3;
A.S.A. 1947, § 82-1203.

14-283-103. Board of commissioners — Appointment.

(a) If at such election a majority of the qualified electors voting on the question vote "FOR" the establishment of the proposed mosquito abatement district and the levy of assessed benefits to support the district, the county court shall enter an order establishing the district as described in the petitions and shall appoint five (5) qualified electors of the district as a board of commissioners for the district. Two (2) members of the commission shall be appointed for terms of two (2) years and three (3) members shall be appointed for terms of three (3) years.

(b) All successor members shall be appointed by the county court for terms of three (3) years.

(c) Vacancies occurring on the board because of resignation or otherwise shall be filled by the county court for the unexpired term.

(d) The members of the board shall serve without compensation, but shall be entitled to actual expenses incurred in attending meetings in an amount not to exceed fifty dollars ($50.00) per month for each member of the board.

History. Acts 1979, No. 530, § 4,
A.S.A. 1947, § 82-1204.

14-283-104. Board of commissioners — Power and authority.

The board of commissioners of any district created pursuant to this chapter shall have the power and authority to:

(1) Execute contracts and other instruments for and in behalf of the district;

(2) Cooperate with any other mosquito abatement district or any political subdivision or agency of this state or the United States in carrying out the purposes of the district;

(3) Establish rules and regulations for the transaction of the district's business and for carrying out the purposes of the district;

(4) Make assessments of benefits against real property in the district and provide for the collection of the assessments and issue bonds as provided in this chapter to finance the district and its purposes; and

(5) Do any and all other actions necessary or desirable to enable the board to carry out its responsibilities and to accomplish the purposes of the district.

History. Acts 1979, No. 530, § 7;
A.S.A. 1947, § 82-1207

14-283-105. Board of commissioners — Proceedings — Offices.

(a)(1) The board shall annually choose from among its members a chairman and a secretary-treasurer.

(2) The chairman and secretary-treasurer shall furnish bond conditioned upon faithful performance of their duties in the amount of five thousand dollars ($5,000) each. The cost of securing and maintaining the bonds shall be paid from funds of the district.

(b)(1) The board shall employ a director who shall have such training, experience, and qualifications as may be prescribed by the State Board of Health. The board may employ such other employees as it deems necessary to carry out the purposes of the district.

(2) Employees of the board shall have such responsibilities and receive such compensation as may be prescribed by the board.

(c) The county in which any district is located shall cooperate with and assist the board by providing suitable office space and meeting facilities for the board and its staff.

(d) The board shall meet at least quarterly and at such other times as it may deem necessary to properly carry out its responsibilities.

(1) Meetings shall be called by the chairman or a majority of the members of the board.

(2) Three (3) members of the board shall constitute a quorum and any substantive action of the board shall require an affirmative vote of at least three (3) members of the board.

(e) The Director of the Department of Health shall be an ex officio member of the board and shall serve without compensation. He or his representative shall cooperate with and assist the board by furnishing the board with such surveys, maps, information, and advice as may be helpful to the board in carrying out its responsibilities and to assist in such other manner as may be reasonably requested by the board.

History. Acts 1979, No. 530, §§ 5, 6; A.S.A. 1947, §§ 82-1205, 82-1206.

14-283-106. Preparation of plans — Assessors and assessments generally.

(a) As soon as is practical after its establishment, the board shall prepare plans for providing mosquito abatement services and for acquiring the property and equipment necessary to carry out the purposes of the district.

(b) The county assessors shall assess the annual benefits which will accrue to the real property within the district from the providing of mosquito abatement services.

(c) The original assessment of benefits and any reassessment shall be advertised and equalized in the same manner as provided in this chapter, and owners of all property whose assessment has been raised shall have the right to be heard and to appeal from the decision of the assessor, as provided in this chapter.

(d) The assessor shall place opposite each tract the name of the supposed owner, as shown by the last county assessment, but a mistake in the name shall not void the assessment, and the assessor shall correct errors which occur in the county assessment list.

(e) The assessments levied under this chapter shall be collected by the county collector in the same manner as property taxes.

History. Acts 1979, No. 530, § 8; A.S.A. 1947, § 82-1208; Acts 1989, No. 661, § 2.

14-283-107. Assessment — Notice and hearing.

(a) The assessment shall be filed with the county clerk of the county, and the secretary of the board shall thereupon give notice of its filing by publication one (1) time a week for two (2) weeks in a newspaper published and having a bona fide circulation in the county. This notice may be in the following form:

"Notice is hereby given that the assessment of annual benefits of ..... District Number ..... has been filed in the office of the County Clerk of ..... County, where it is open for inspection. All persons wishing to be heard on said assessment will be heard by the assessors of said district in the office of the county clerk between the hours of 1 P.M. and 4 P.M., at ....., on the ..... day of ....., 19...."

(b) On the day named by the notice, it shall be the duty of the assessors to meet, at the place named, as a board of assessors, to hear all complaints against the assessment, and to equalize and adjust the assessments. Their determination shall be final unless suit is brought in the chancery court within thirty (30) days to review it. If the board is unable to hear all complaints between the hours designated, they shall adjourn over from day to day until all parties have been heard.

History. Acts 1979, No. 530, § 9; A.S.A. 1947, § 82-1209.

14-283-108. Assessments — Annual reassessments.

(a) The commissioners shall one (1) time a year order the assessors to reassess the annual benefits of the district, provided there have been improvements made or improvements destroyed or removed from one (1) or more tracts of land in the district, making it necessary to have the annual benefits revised.

(b)(1) Whereupon, it shall be the duty of the assessors to reassess the benefits of the district, and the annual benefits assessed may be raised or lowered as conditions of the property change.

(2) However, the annual benefits extended against any piece of property shall not be increased from the annual benefits originally extended unless improvements are made to the land that will be benefited by the mosquito abatement services provided by the district.

History. Acts 1979, No. 530, § 10;
A.S.A. 1947, § 82-1210.

14-283-109. Assessment — Filing and collection.

(a) The original assessment record or any reassessment record shall be filed with the county clerk, whose duty it shall be to extend the annual benefit assessment annually upon the tax books of the county until the district is dissolved.

(b) It shall then be the duty of the collector to collect each year the annual benefit assessment extended upon the book along with the other taxes, and the taxes shall be paid over by the collector to the depository of the district at the same time that he pays over the county funds.

(c)(1) If there is any change in the annual benefits assessed, a certified copy of the revised assessment shall be filed with the county clerk who shall extend the revised assessment annually upon the tax books until a new assessment is made, which shall be extended upon the tax books in a similar manner. The power to reassess and extend the assessment upon the tax books shall be a continuing power as long as the district continues to exist. It shall be the duty of the county collector to collect the taxes so extended.

(2) In lieu of filing the reassessment, the assessors may make the changes in the assessments in red ink on the assessment already on file, or the assessment record may contain many columns at the head of which the year shall be designated and, in the column, the new annual benefits may be shown in red ink which will indicate any increase or decrease in the original annual benefits extended. When the change is made, a red ink line shall be drawn through the figures showing the original annual benefits extended.

History. Acts 1979, No. 530, § 11;
A.S.A. 1947, § 82-1211.

14-283-110. Assessment — Time for payment — Failure to pay.

(a) All annual benefits extended and levied under the terms of this chapter shall be payable at the time ad valorem taxes are payable, and if any annual benefit assessments levied by the board pursuant to this chapter are not paid when due, the collector shall not embrace the assessments in the taxes for which he shall sell the lands, but he shall report the delinquencies to the board of commissioners of the district. The board shall add to the amount of the annual benefit assessment a penalty of ten percent (10%).

(b) The board of commissioners shall enforce the collection by chancery proceedings in the chancery court of the county in the manner provided by §§ 14-121-426 — 14-121-432.

(c) The owner of property sold for taxes thereunder shall have the right to redeem it at any time within two (2) years from the time when his lands have been stricken off by the commissioner making the sale.

History. Acts 1979, No. 530, § 12; A.S.A. 1947, § 82-1212.

14-283-111. Expenditures — Public proceedings and transactions — Filing of report.

(a) Funds of the district shall be expended only upon the order of the board and upon a voucher check signed by the chairman and secretary-treasurer of the board.

(1) Every voucher check shall state upon its face to whom payable, the amount, and the purpose for which it is used.

(2) All voucher checks shall be dated and shall be numbered consecutively in a record to be kept by the board of the number and amount of each.

(b) All proceedings and transactions of the board shall be a matter of public record and shall be open to the inspection of the public.

(c) The board shall file with the county clerk in January of each year a certified itemized report showing all moneys received, the date of receipt, and the source from which received; and all moneys paid out, date paid, to whom paid, and for what purpose, during the preceding year, together with an itemized list of all delinquent taxes showing owner, description of property, years for which the tax is delinquent, and amount of total delinquency.

History. Acts 1979, No. 530, § 13; A.S.A. 1947, § 82-1213.

14-283-112. Bonds and certificates of indebtedness generally.

(a) The board shall have the authority to issue negotiable bonds or certificates of indebtedness to secure funds for the expenses of the district including office supplies and salaries, the purchase of equipment, facilities, chemicals, and such other items as may be necessary to carry out the purposes of the district.

(1) Bonds issued by the board shall be for a term of not more than twenty (20) years and shall bear interest at a rate not to exceed ten percent (10%) per annum.

(2) To secure the bonds, the board may pledge all or a portion of the benefit assessed against real property in the district.

(b) Bonds of the districts shall be authorized by resolution of the board and may be coupon bonds, payable to bearer, or may be registrable as to principal only or as to principal and interest and may be made exchangeable for bonds of another denomination; may be in such form and denomination; may have such date or dates; may be stated to mature at such times; may bear interest payable at such times and at such rate or rates, provided that no bond may bear interest at a rate exceeding ten percent (10%) per annum; may be payable at such places within or without the State of Arkansas; may be made subject to such terms of redemption in advance of maturity at such prices; and may contain such terms and conditions, all as the board shall determine.

(1) The bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to provisions as to registration, as set forth above.

(2) The authorizing resolution may contain any of the terms, covenants, and conditions that are deemed desirable by the board including, without limitation, those pertaining to the maintenance of various funds and reserves, the nature and extent of the security, the issuance of additional bonds and the nature of the lien and pledge, parity or priority, in that event, the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the investing and reinvesting in securities specified by the board of any moneys during periods not needed for authorized purposes, and the rights, duties, and obligations of the district, the board, and of the holders and registered owners of the bonds.

(c) The authorizing resolution may provide for the execution of a trust indenture by the district with a bank or trust company within or without the State of Arkansas. The trust indenture may contain any terms, covenants, and conditions that are deemed desirable by the board including, without limitation, those pertaining to the maintenance of various funds and reserves, the nature and extent of the security, the issuance of additional bonds and the nature of the lien and pledge, parity or priority, in that event, the custody and application of the proceeds of the bonds, the collection and disposition of assessments and of revenues, the investing and reinvesting in securities specified by the board of any moneys during periods not needed for authorized purposes, and the rights, duties, and obligations of the board and the holders and registered owners of the bonds.

(d) The bonds shall be sold at public sale on sealed bids.

(1) Notice of the sale shall be published one (1) time a week for at least two (2) consecutive weeks in a newspaper having a general circulation throughout the State of Arkansas, with the first publication to be at least twenty (20) days prior to the date of sale and may be published in such other publications as the district may determine.

(2) The bonds may be sold at such price as the board may accept including sale at a discount, but in no event shall any bid be accepted which results in a net interest cost, which is determined by computing the aggregate interest cost from date to maturity at the rate or rates bid and deducting any premium or adding any amount of any discount, in excess of the interest cost computed at par for bonds bearing interest at the rate of ten percent (10%) per annum.

(3) The award, if made, shall be to the bidder whose bid results in the lowest net interest cost.

(e)(1) The bonds shall be executed by the manual or facsimile signature of the chairman of the board and by the manual signature of the secretary-treasurer of the board.

(2) The coupons attached to the bonds shall be executed by the facsimile signature of the chairman of the board.

(3) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of the bonds or

coupons, their signatures shall, nevertheless, be valid and sufficient for all purposes.

(f) The district shall adopt and use a seal in the execution and issuance of the bonds, and each bond shall be sealed with the seal of the district.

History. Acts 1979, No. 530, § 14; A.S.A. 1947, § 82-1214.

14-283-113. Bonds — Security — Liability of board for bonds and contracts.

(a)(1) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this chapter, that the bonds shall be obligations only of the district, and that in no event shall they constitute any indebtedness for which the faith and credit of the state or any county or municipality or any of the revenues of the state or any county or municipality are pledged.

(2) No member of the board shall be personally liable on the bonds or for any damages sustained by anyone in connection with any contracts entered into in carrying out the purpose and intent of this chapter unless he shall have acted with corrupt intent.

(b)(1) The principal of, interest on, and paying agent's fees in connection with the bonds shall be secured by a lien on, and pledge of, and shall be payable from the assessments levied against the real property within the district.

(2) The right to issue subsequent issues of bonds can, if the district so determines, be reserved in any authorizing resolution or trust indenture on either a parity or subordinate lien basis and upon such terms and conditions as the district may determine and specify in the particular authorizing resolution or trust indenture.

History. Acts 1979, No. 530, § 15; A.S.A. 1947, § 82-1215.

14-283-114. Bonds — Refunding.

(a) Bonds may be issued for the purpose of refunding any bonds issued under this chapter.

(b) Refunding bonds may be either sold or delivered in exchange for the bonds being refunded. If sold, the proceeds may be either applied to the payment of the bonds being refunded or deposited in trust and there maintained in cash or investments for the retirement of the bonds being refunded, as shall be specified by the district in the resolution or trust indenture securing the bonds.

(c) The resolution or trust indenture securing the refunding bonds may provide that the refunding bonds shall have the same priority on assessments or revenues pledged for their payment as was enjoyed by the bonds refunded.

(d) Refunding bonds shall be sold and secured in accordance with the provisions of this chapter pertaining to the sale and security of the bonds initially issued.

History. Acts 1979, No. 530, § 16; A.S.A. 1947, § 82-1216.

14-283-115. Bonds — Tax exemption.

Bonds issued under the provisions of this chapter, and the interest thereon, shall be exempt from all state, county, and municipal taxes. This exemption shall include income, inheritance, and estate taxes.

History. Acts 1979, No. 530, § 17; A.S.A. 1947, § 82-1217.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Ark. Const. Amend. 57, § 1 and § 26-3-302. Arkansas Const. Amend. 57, § 1 provides that the General Assembly may classify intangible personal property for assessment at lower percentages of value than other property and may exempt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempts all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

14-283-116. Dissolution of district.

(a) A mosquito abatement district created pursuant to this chapter may be dissolved upon a vote of a majority of qualified electors of the district, and the question of dissolution of the district may be submitted to the electors in the same manner as is prescribed in this chapter for submitting the question of the establishment of the district.

(b) If any district having outstanding bonds or other indebtedness is dissolved, the assessed benefits being levied at the time of dissolution shall continue to be levied and collected until the outstanding bonds or other indebtedness are paid.

(c) No election on the question of dissolution of a mosquito abatement district may be held within the first three (3) years after the establishment of the district.

History. Acts 1979, No. 530, § 18; A.S.A. 1947, § 82-1218.

CHAPTER 284

FIRE PROTECTION DISTRICTS

SUBCHAPTER.

1. General Provisions.
2. Fire Protection Districts Outside of Cities and Towns.
3. Rural Fire Protection Service.
4. Insurance Premium Taxes.

A.C.R.C. Notes. References to "this chapter" in §§ 14-284-101 to 14-284-124 and subchapters 2 and 3 may not apply to § 14-284-125 and subchapter 4 which were enacted subsequently.

Subchapter 1 — General Provisions

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A.C.R.C. Notes. References to "this subchapter" in §§ 14-284-101 to 14-284-124 may not apply to § 14-284-125 which was enacted subsequently.

Cross References. Fire training academy board, § 12-13-202.

Proceedings to correct errors or irregularities in formation of district, § 14-86-101 et seq.

Tort liability immunity, § 21-9-301 et seq.

Preambles. Acts 1939, No. 183 contained a preamble which read: "Whereas, there are areas in the state, which are so built up, that the operation of a fire department would so reduce the insurance rates on the improved property as to more than offset the expense of maintaining and operating said fire department, and

"Whereas, it is not practical to do so with volunteer contributions, as some will pay and some will not and, therefore, there is a need for the right of a majority of landowners to create a district, which would not be authorized to sell bonds but merely authorized to extend an assessment annually, which would in all cases be less than the reduction in fire insurance rates obtained, and use this annual assessment to pay the expenses of operating the fire department, and

"Whereas, this bill does not permit the issuing of any bonds, and provides that the commissioners of the district are to be appointed by the County Court, and must be resident property holders of the districts, Therefore. "

Effective Dates. Acts 1939, No. 183, § 19: approved Mar. 9, 1939. Emergency clause provided: "This act, providing for the protection of property from fire, will also protect lives from the danger of fire,

and from the danger of thoroughfares in bad condition, and this act is, therefore, necessary for the immediate preservation of the public safety, and an emergency is hereby declared, and this act shall take effect and be in force immediately after its passage."

Acts 1975, No. 979, § 3: Apr. 9, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relating to the issuance of interest bearing notes by fire protection districts is unduly restrictive and makes it almost impossible for fire protection districts to accomplish their purposes; that this Act is designed to increase the maximum limit on interest bearing notes a district may issue and also to increase the maximum rate of interest which such notes may bear; that this Act should be given effect immediately in order to permit fire protection districts to purchase the necessary equipment and facilities to provide adequate services to the property owners in such districts. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 205, § 4: Feb. 21, 1977 Emergency clause provided: "It is hereby found and determined by the General Assembly that certain small incorporated towns in this State are desirous of acquiring a fire truck and other firefighting equipment and facilities to provide fire protection to the residents of such towns; that the most appropriate way for such small municipalities to raise funds for the purchase, maintenance and operation of firefighting equipment and facilities is through the formation of a fire protection district; that this Act is designed to specifically authorize certain such small incorporated towns to establish a fire protection district under the provisions of Act 183 of 1939, as amended, and should be given effect at the earliest possible date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1992 (1st Ex. Sess.), No. 10, § 14. Mar. 4, 1992. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, meeting in First Extraordinary Session, that an appropriation to the Department of Finance and Administration is necessary in order to disburse funds collected after January 1, 1992, under the provisions of Arkansas Code §§ 14-284-401 et seq. and § 26-57-614, and that the creation of the Fire Protection Premium Tax Fund will allow those monies to be disbursed for the provision of adequate fire protection services in the most efficient manner. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 426, § 7 Feb. 24, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that fire protection is essential to the safety of the public and that the existing law needs to be clarified to permit fire protection districts to provide adequate protection to the public. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

14-284-101. Definitions.

(a) As used in this subchapter, unless the context otherwise requires, wherever the words "majority in value" are used, it shall be construed to mean a majority in assessed value as shown by the latest county assessment records for general taxes.

(b) As used in this chapter, unless the context otherwise requires, "contractor" means any person, firm, partnership, copartnership, association, corporation, or other organization, or any combination thereof,

who, for a fixed price, commission, fee, or wage, attempts to or submits a bid to construct, or contracts or undertakes to construct, or assumes charge, in a supervisory capacity or otherwise, or manages the construction, erection, alteration or repair, or has or have constructed, erected, altered, or repaired, under his, their, or its direction, any fire station, building, or any other improvement or structure for the benefit or use of a district created under this chapter.

History. Acts 1939, No. 183, § 16; A.S.A. 1947, § 20-916; Acts 1995, No. 426, § 1.

Amendments. The 1995 amendment added (b).

CASE NOTES

Cited: Hannah v. Deboer, 311 Ark. 215, 843 S.W.2d 800 (1992).

14-284-102. Purpose of district.

The purpose of the district shall be the building, equipping, and operating of a fire station or stations equipped with a fire truck or fire trucks, fire hose, chemical fire extinguishers, and other equipment for extinguishing fires. The district may provide other emergency services, like hazardous and toxic materials response, search and rescue, emergency medical, ambulance, and patient transport services, and such other functions as may be assigned to or reasonably expected of a local fire services agency and which it is trained and qualified to perform.

History. Acts 1939, No. 183, § 1; 1973, No. 302, § 1; 1979, No. 486, § 1; A.S.A. 1947, § 20-901; Acts 1995, No. 426, § 2; 1997, No. 1093, § 1.

Amendments. The 1995 amendment inserted "or stations" in the first sentence; and added the last sentence.

The 1997 amendment rewrote the last sentence.

14-284-103. Petition generally.

(a) Upon the petition of majority in value of the owners of real property in any designated area, no part of which is more than three (3) miles, except as provided in subsection (e) of this section, from a lot or plot of ground not exceeding a square acre in area on which the fire station is located or is to be located, the location of which lot or plot of ground must be definitely fixed in the petition, and which area defined in the petition contains not less than one hundred (100) residences, exclusive of garages and other buildings, it shall be the duty of the county court to lay off into an improvement district the territory described in the petition and to name five (5) commissioners of the district who are resident property holders in the district.

(b) Portions of incorporated towns may be included in the districts, provided the town has no equipped fire fighting station.

(c) If any part of the district, as defined in the petition therefor or the court order establishing the district, shall be found to be more than three (3) miles from the designated location of the fire station, it shall

not affect the validity of the district, but the portion of the district in excess of three (3) miles from the designated location of the fire station shall be excluded.

(d) However, any tract of land not exceeding three hundred thirty square feet (330 sq. ft.) which equals one-sixteenth ($1/16$) of a section in length and breadth, any part of which shall be within three (3) miles of the fire station of the district, may be included in the district.

(e) A fire protection district having a radius of five (5) miles may be created in any county having a population of not less than fifteen thousand three hundred (15,300) and not more than fifteen thousand five hundred (15,500) according to the 1970 Federal Decennial Census in the same manner and for the same purposes as provided in this subchapter for a fire protection district having a three-mile radius.

(f) The petition shall state the purpose or purposes for which the district is to be formed, and the judgment establishing the district shall give it a name which shall be descriptive of the purpose. The district shall also receive a number to prevent its being confused with other districts for similar purposes.

History. Acts 1939, No. 183, §§ 1, 2; 1973, No. 302, § 1; 1979, No. 486, § 1; A.S.A. 1947, §§ 20-901, 20-902.

14-284-104. Petition — Notice and hearing.

(a) Upon the filing of the petition, it shall be the duty of the county clerk to give notice of the filing thereof, describing the territory to be affected and calling upon all persons who wish to be heard upon the question of the establishment of the district to appear before the county court on a day to be fixed in the notice.

(1) The notice shall be published one (1) time a week for two (2) weeks in some newspaper published and having a bona fide circulation in the county where the lands affected are situated.

(2) This notice may be in the following form:

"Notice is hereby given that a petition has been filed praying for the formation of an improvement district for the purpose of ..... Said petition is on file at the office of the county clerk of ..... County, where it is open to inspection. All persons desiring to be heard on the question of the formation of said district will be heard by the county court at ..... M., on the .... day of ....., 19.... The following lands are affected: (Here give description of lands affected; the same may be described by using the largest subdivisions possible).

.....
County Clerk"

(b) Any number of identical petitions may be circulated, and identical petitions with additional names may be filed at any time until the county court acts.

(c) On the day named in the notice, it shall be the duty of the county court to meet and to hear the petition and to ascertain whether those signing the petition constitute a majority in value.

(1) If the county court determines that a majority in value have petitioned for the improvement, it shall enter its judgment laying off the district as defined in the petition and appointing the commissioners.

(2) If it finds that a majority has not signed the petition, the county court shall enter its order denying the petition.

(d) Any petitioner or any opponent of the petition may appeal from the judgment of the county court creating or refusing to create the district, but the appeal must be taken and perfected within thirty (30) days. If no appeal is taken within that time, the judgment creating the district shall be final and conclusive upon all persons.

History. Acts 1939, No. 183, § 2; A.S.A. 1947, § 20-902.

Cross References. *Notice on formation of improvement districts, § 14-86-301 et seq.*

14-284-105. Board of commissioners — Appointment — Qualifications.

(a) The board of commissioners shall be resident property holders in the district and shall be citizens of integrity and good business ability.

(b)(1) The commissioners shall be appointed to serve for terms of one (1), two (2), three (3), four (4), and five (5) years respectively, and the length of the term of each commissioner shall be stated in the order of the county court making the appointment.

(2) As the terms of the commissioners expire, the county court shall appoint successors to hold office for a term of five (5) years. The county court may reappoint a commissioner whose term is expiring.

(c) In case of a vacancy on the board of commissioners after the commissioners have organized, the county court shall appoint some resident property holder as his successor who shall qualify in like manner and within a like time.

(d) The commissioners shall serve without compensation and until their successors are appointed and qualified.

History. Acts 1939, No. 183, §§ 1-3; 1973, No. 302, § 1; 1979, No. 486, § 1; A.S.A. 1947, §§ 20-901—20-903.

14-284-106. Board of commissioners — Proceedings — Officers — Employees — Selection of depository.

(a)(1) Within thirty (30) days after their appointment, the commissioners shall take and file with the county clerk their oaths of office in which they shall swear to support the Constitution of the United States and the Constitution of the State of Arkansas, to discharge faithfully their duties as commissioners, and that they will not be interested, directly or indirectly, in any contract let by the board.

(2) Any commissioner failing to file the oath within that period shall be deemed to have declined the office. The county court shall appoint some resident property holder as his successor who shall qualify in like manner within a like time.

(b) The board shall organize by electing one (1) of its members chairman, and it shall select a secretary.

(c) The board may also employ fire fighters and organize a voluntary fire department, as it deems best, and fix the compensation for paid fire fighters.

(d) Each district shall be a body corporate with power to sue and be sued, and it shall have a corporate seal.

(e) The board shall also select some solvent bank or trust company as the depository of its funds.

History. Acts 1939, No. 183, § 3; A.S.A. 1947, § 20-903.

14-284-107. Board of commissioners — Liability.

No member of the board of improvement shall be liable for any damages unless it shall be made to appear that he had acted with a corrupt and malicious intent.

History. Acts 1939, No. 183, § 13; A.S.A. 1947, § 20-913.

14-284-108. Plans for improvement — Assessors and assessments generally.

(a) Immediately after their qualification, the commissioners shall form plans for the improvements they intend to make and the equipment they intend to purchase. To that end, they may employ an architect, if a fire station is to be built, and shall file a copy of the plans or specifications with the county clerk.

(b) They shall appoint three (3) assessors to assess the annual benefits which will accrue to the real property within the district from making the improvement and operation of the fire fighting equipment, and fix their compensation. The assessors shall take an oath that they will well and truly assess all annual benefits that will accrue to the landowners of the district by the making of the proposed improvement and the acquisition and operation of the fire fighting equipment.

(c) The assessors shall proceed to assess the annual benefits to the lands within the district, and shall inscribe in a book each tract of land and shall extend opposite each tract of land the amount of annual benefits that will accrue each year to the land by reason of building and equipping the fire station and operating the fire equipment for the extinguishing of fires, and the keeping in repair of the streets or roads liable to be traversed by the fire fighting equipment.

(d) In case of any reassessment, the reassessment shall be advertised and equalized in the same manner as provided in this section for

making the original assessment. The owners of all property whose assessment has been raised shall have the right to be heard and to appeal from the decision of the assessors as in the original assessment.

(e) The assessors shall place opposite each tract the name of the supposed owner as shown by the last county assessment. However, a mistake in the name shall not vitiate the assessment, and the assessors shall correct errors which occur in the county assessment list.

(f) The assessors shall hold their office at the pleasure of the board, which can fill any vacancy in the position of assessors.

History. Acts 1939, No. 183, § 4; A.S.A. 1947, § 20-904, Acts 1991, No. 1144, § 1.

Cross References. Partition of assessments among several owners of single tract, § 14-86-601.

14-284-109. Assessment — Notice and hearing.

(a) The assessment shall be filed with the county clerk of the county, and the secretary of the board shall give notice of its filing by publication one (1) time a week for two (2) weeks in a newspaper published and having a bona fide circulation in the county. This notice may be in the following form:

"Notice is hereby given that the assessment of annual benefits of ..... District Number ..... has been filed in the office of the County Clerk of ..... County, where it is open for inspection. All persons wishing to be heard on said assessment will be heard by the assessors of said district in the office of the county clerk between the hours of 1 P.M. and 4 P.M., at ....., on the ..... day of ....., 19...."

(b) On the day named by the notice, it shall be the duty of the assessors to meet at the place named as a board of assessors and to hear all complaints against the assessment and to equalize and adjust the assessment. Their determination shall be final unless suit is brought in the chancery court within thirty (30) days to review it.

If the board is unable to hear all complaints between the hours designated, they shall adjourn over from day to day until all parties have been heard.

History. Acts 1939, No. 183, § 5; A.S.A. 1947, § 20-905.

14-284-110. Assessment — Annual reassessment.

(a) The commissioners shall one (1) time a year order the assessors to reassess the annual benefits of the district, provided there have been improvements made or improvements destroyed or removed from one (1) or more tracts of land in the district, making it necessary to have the annual benefits revised.

(b)(1) It shall be the duty of the assessors to reassess the benefits of the district, and the annual benefits assessed may be raised or lowered

as conditions of the property change or as requirements of the fire department change.

(2) However, the annual benefits extended against any piece of property shall not be increased from the annual benefits originally extended unless the original benefits were uniformly assessed against all classes of land in the amount of one dollar ($1.00) per parcel of vacant land and ten dollars ($10.00) per parcel of improved land and providing there have been material changes in value or character made from one (1) or more tracts of land in the district since the original assessment of benefits, making it necessary for the assessors to equitably reassess the annual benefits.

History. Acts 1939, No. 183, § 6; A.S.A. 1947, § 20-906; Acts 1993, No. 460, § 1.

Amendments. The 1993 amendment rewrote (b)(2).

14-284-111. Assessment — Order of levy — Lien.

(a)(1) The board of commissioners of the district shall, at the same time that the annual benefit assessment is equalized or at any time thereafter, enter upon its records an order. This order shall have all the force of a judgment, providing that there shall be assessed upon the real property of the district, and collected annually, the annual benefit assessment set opposite each tract of land described, which annual benefit is to be paid by the owner of the real property in the district, payable as provided in the order.

(2) However, the commissioners shall, promptly after an entry of an order of levy of annual benefit assessment, publish one (1) time a week for two (2) consecutive weeks in some newspaper having general circulation in the district a notice setting forth the order of levy and warning all persons affected that the order of levy shall become final unless suit is brought to contest it within thirty (30) days of the date of first publication of the notice. No property owner shall be barred from contest of the levy within the thirty-day publication period.

(b)(1) The uncollected annual benefit assessment as extended shall be a lien upon the real property in the district against which it is extended from the time the same is levied, shall be entitled to preference over all demands, executions, encumbrances, or liens whenever created, and shall continue until the assessment, with any penalty and costs that may accrue thereon, shall have been paid.

(2) Notice of the amount due shall be given, by mail at his last known address to each landowner who fails to pay his assessment on or before the third Monday in April.

(3) The remedy against the annual benefit assessment shall be by suit in chancery, and the suits must be brought within thirty (30) days from the time that the notice is mailed. On the appeal, the presumption shall be in favor of the legality of the annual benefit assessment.

History. Acts 1939, No. 183, § 7; 1961, No. 152, § 1, A.S.A. 1947, § 20-907.

14-284-112. Assessment — Filing and collection.

(a) The original assessment record, or any reassessment record, shall be filed with the county clerk, whose duty it shall be to extend the annual benefit assessment annually upon the tax books of the county until the district is dissolved.

(b) It shall then be the duty of the collector to collect each year the annual benefit assessment extended upon the book along with the other taxes, and the taxes shall be paid by the collector over to the depository of the district at the same time that he pays over the county funds.

(c)(1) If there is any change in the annual benefits assessed, a certified copy of the revised assessment shall be filed with the county clerk who shall extend the revised assessment annually upon the tax books until a new assessment is made, which shall be extended upon the tax books in a similar manner. The power to reassess and extend the assessment upon the tax books shall be a continuing power as long as the district continues to exist. It shall be the duty of the county collector to collect the taxes so extended.

(2) In lieu of filing the reassessment, the assessors may make the changes in the assessments in red ink on the assessment already on file, or the assessment record may contain many columns, at the head of which the year shall be designated and, in the column, the new annual benefits may be shown in red ink which will indicate any increase or decrease in the original annual benefits extended. When the change is made, a red ink line shall be drawn through the figures showing the original annual benefits extended.

History. Acts 1939, No. 183, § 8; A.S.A. 1947, § 20-908.

14-284-113. Assessment — Time for payment — Failure to pay — Redemption.

(a)(1) All annual benefits extended and levied under the terms of this subchapter shall be payable between the third Monday in February and the third Monday in April of each year.

(2) If any annual benefit assessments levied by the board in pursuance to this subchapter are not paid at maturity, the collector shall not embrace the assessments in the taxes for which he shall sell the lands, but he shall report the delinquencies to the board of commissioners of the district who shall add to the amount of the annual benefit assessment a penalty of ten percent (10%).

(b) The board of commissioners shall enforce the collection by chancery proceedings in the chancery court of the county in the manner provided by §§ 14-121-426 — 14-121-432.

(c) The owner of property sold for taxes thereunder shall have the right to redeem it at any time within two (2) years from the time when his lands have been stricken off by the commissioner making the sale.

History. Acts 1939, No. 183, § 9; A.S.A. 1947, § 20-909

Cross References. Redemption, § 14-86-1501 et seq.

14-284-114. Expenditures — Filing of report.

(a) The depository shall pay out no money save upon the order of the board and upon a voucher check signed by at least two (2) of the commissioners. Every voucher check shall state upon its face to whom payable, the amount, and the purpose for which it is issued. All voucher checks shall be dated and shall be numbered consecutively in a record to be kept by the board of the number and amount of each.

(b)(1) The board of commissioners shall file with the county clerk in January of each year a certified itemized report showing all moneys received, the date of receipt, and the source from which received. The report shall further show all moneys paid out, the date paid, to whom paid, and for what purpose during the preceding year, together with an itemized list of all delinquent taxes showing the owner, a description of the property, the years for which taxes are delinquent, and the amount of total delinquency.

(2) Copies of the report shall be made and furnished to the chief of the fire department, who shall keep the reports at the fire station to be handed out on request by property holders of the district.

History. Acts 1939, No. 183, § 10; A.S.A. 1947, § 20-910; Acts 1995, No. 426, § 3.

Amendments. The 1995 amendment deleted "Two hundred fifty (250)" preceding "Copies" in (b)(2).

14-284-115. Street and road maintenance.

(a) The board of commissioners may make the necessary repairs upon the streets or roads within the district.

(b)(1) It is realized that the fire fighting apparatus must rush with great speed to the place of the fire and that holes or ruts in the streets or roads which it traverses may result in injury or death to fire fighters and in wrecking the fire fighting apparatus.

(2) Therefore, any district organized pursuant to this subchapter is authorized to spend a sum not exceeding two hundred fifty dollars ($250) per annum in maintaining the streets or roads in a safe condition.

(3) It is realized that the expenditure would be a benefit to all the real property in the district.

(4) The petition for and the court order creating the district shall designate the maximum amount that may be expended for labor and material in any year in maintaining the public thoroughfares of the district, but in no case shall the amount exceed two hundred fifty dollars ($250) annual expenditure.

History. Acts 1939, No. 183, §§ 1, 3; 1973, No. 302, § 1; 1979, No. 486, § 1; A.S.A. 1947, §§ 20-901, 20-903.

14-284-116. Awarding of contracts.

(a) All contractors shall be required to give bond for the faithful performance of contracts as may be awarded them, with good and sufficient sureties in an amount to be fixed by the board, and the board shall not remit or excuse the penalty or forfeiture of the bond or the breaches thereof.

(b) The board may appoint all necessary agents for carrying on the work and may fix their pay. The board shall pay a reasonable fee for legal services in organizing the district.

(c) The board may sell all unnecessary material and implements that may be on hand and which may not be necessary for the completion of the improvement under way, or for the operation thereof, and may in general make all such contracts in the conduct of the affairs of the district as may best serve the public interest.

(d) The board shall make no contract for the purchase of material or equipment costing five hundred dollars ($500) or more except upon sealed bids opened in public, and it shall be the duty of the secretary of the district to call on the telephone or notify in person not less than ten (10) property holders, not less than forty-eight (48) hours or more than one (1) week before the time of receiving the bids. The secretary shall also deliver to the daily papers in the county and at least one (1) weekly paper a news item notice of intention to receive bids on certain equipment.

History. Acts 1939, No. 183, § 11; A.S.A. 1947, § 20-911; Acts 1992 (1st Ex. Sess.), No. 10, § 2.

Amendments. The 1992 (1st Ex. Sess.) amendment substituted "five hundred dollars ($500)" for "one hundred dollars ($100)" in the first sentence of (d).

Cross References. Contractors' bonds, § 22-9-401 et seq.

14-284-117. Issuance of notes.

(a)(1) In order to acquire equipment and to do the work, the board may issue the negotiable notes of the district signed by the members of the board and bearing a rate of interest not exceeding eight percent (8%) per annum, and it may pledge and mortgage a portion of the future annual benefit assessments as collected for the payment thereof.

(2) The petition for the creation of a district in the court order creating the district shall limit the total amount of notes that may be outstanding at any time, but the limits may be increased to the maximum prescribed in this section by a vote of a majority in value of the owners of real property in the district.

(3) No district created pursuant to this section shall have notes outstanding at any one time in excess of fifty thousand dollars ($50,000).

(b) The district shall have no authority to issue bonds.

History. Acts 1939, No. 183, § 12; 1975, No. 979, § 1; A.S.A. 1947, § 20-912.

14-284-118. Dissolution.

(a) The district shall not cease to exist upon the completion of the improvement, but it shall continue to exist for the purpose of operating the fire fighting equipment and keeping it in repair until such time as the owners of a majority in value of the real property within the district petition the county court for dissolution of the district.

(b) Publication of the petition for dissolution, as provided for in creating the district, shall be made, and, if the county court finds that a majority in value of the real property in the district have petitioned for the dissolving of the district, the district shall be dissolved.

(c) Parties for or against the dissolution shall have the same right of appeal as in the creation of the district.

History. Acts 1939, No. 183, § 14; A.S.A. 1947, § 20-914.

14-284-119. Certain suits in public interest.

(a) All cases involving the validity of such districts or the annual benefit assessments and all suits to foreclose the lien of annual benefit assessments shall be deemed matters of public interest and shall be advanced and disposed of at the earliest possible moment.

(b) All appeals therefrom must be taken and perfected within thirty (30) days.

History. Acts 1939, No. 183, § 15; A.S.A. 1947, § 20-915.

14-284-120. Alteration of plans and specifications.

(a) The commissioners may at any time alter the plans and specifications, which shall be filed with the county court. Notice of the filing shall be given by publication for two (2) weeks in some newspaper issued and having a bona fide circulation in the county.

(b) If by reason of a change of plans the board of commissioners deems that the assessment of benefits has become inequitable, it shall direct the assessors to make a reassessment. If any property owner deems that by reason of the change of plans his assessment has become inequitable, he may, within two (2) weeks after the last publication of the notice, petition the board to order a reassessment. The decision of the board upon his petition shall be final unless an appeal is taken within ten (10) days to the county court. In case of a reassessment, the reassessment shall be filed, advertised, and equalized as provided for in the original assessment.

History. Acts 1939, No. 183, § 16; A.S.A. 1947, § 20-916.

14-284-121. Fee of collector and county clerk.

The collector of taxes in any county, in collecting annual benefit assessments in any district created under this subchapter or in collecting taxes in any improvement district created under Acts 1921, No. 660 [repealed] or Acts 1923, No. 126 [superseded], shall deduct one percent (1%) of the annual benefit assessments or taxes so collected, retain one-half of one percent (½ of 1%) as the fee of the collector for collecting the assessments or taxes, and pay over the remaining one-half of one percent (½ of 1%) of the assessments or taxes collected to the county clerk of the county as the fee of the county clerk for extending on the assessment records of the county the annual benefit assessments or taxes.

History. Acts 1939, No. 183, § 17;
A.S.A. 1947, § 20-917.

14-284-122. Authority to contract with other governmental entities to provide fire protection services.

Fire protection improvement districts or fire protection districts organized under this subchapter are authorized to contract with a city, town, county, the state, the federal government, or an existing fire protection improvement district or fire protection district for the provision of fire protection services.

History. Acts 1983, No. 500, § 1;
A.S.A. 1947, § 20-949.

14-284-123. Formation in certain towns.

(a) The real property owners in any incorporated town in this state having a population of not less than four hundred twenty-five (425) persons nor more than four hundred thirty-five (435) persons according to the 1970 Federal Decennial Census are authorized to form a fire protection district under the provisions of this subchapter for the purpose of acquiring, maintaining, and operating fire fighting equipment and facilities to provide fire protection to the residents of the incorporated town.

(b) A fire protection district formed pursuant to the authority granted in this section shall be formed in the manner and for the purposes prescribed in this subchapter and shall have all powers, authority, and responsibility of other fire protection districts created under it.

History. Acts 1977, No. 205, §§ 1, 2;
A.S.A. 1947, §§ 20-901.1, 20-901.2.

14-284-124. Consolidation — Conditions and procedures.

(a) Fire protection districts organized under this subchapter may consolidate if:

(1) The districts are geographically contiguous;

(2) Located in the same county; and

(3) No parcel of land in the new district will be more than three (3) miles from an existing fire station.

(b)(1) Consolidation of fire protection districts may be initiated upon the adoption of a resolution for consolidation by the board of directors of each district.

(2)(A) Upon adopting a resolution, each fire protection district shall hold a public hearing to be held in the district no sooner than twenty (20) days and no later than forty-five (45) days following the adoption of the resolution.

(B)(i) Each district shall publish notice of its hearing in a newspaper of general circulation in the district once a week for two (2) consecutive weeks.

(ii) The notice shall include the date, time, place, and purpose of the hearing.

(3)(A) Following the hearing, the commissioners of the district shall vote on a resolution finding that consolidation of the districts is in the best interest of the landowners of the district.

(B) If the resolution is adopted by the board of commissioners, a copy of the resolution shall be sent to the county court in the county where the district is located.

(4)(A) Upon receiving a resolution from each district to be consolidated, the county court shall order the districts consolidated and shall name five (5) commissioners of the new district.

(B) The new commissioners shall be appointed pursuant to § 14-284-105.

(c)(1) Any fire protection district which is formed by the consolidation of two (2) or more fire protection districts shall consolidate all assets held by it arising from any of the districts and shall also assume all liabilities of the districts. The assets may be used by the district for any purpose allowed by law, and the liabilities of the district may be paid with funds arising from any source.

(2) All the provisions, rights, security, pledges, covenants, and limitations contained in the instrument creating a liability shall not be affected by the consolidation but shall apply with the same force and effect as provided in the original creation of liability.

(d)(1) The existing assessments of each district consolidated into the new district shall remain in force until the end of the year in which the districts are consolidated.

(2) The commissioners shall order the assessors to reassess the annual benefits of the new district for the following year.

(e) A consolidated fire protection district shall not have notes outstanding at any one (1) time in excess of one hundred thousand dollars ($100,000).

History. Acts 1995, No. 286, § 1.

14-284-125. Boundaries of overlapping districts.

The State Forestry Commission shall have authority to adjust the boundaries of fire protection districts having overlapping boundaries. The commission shall adjust the boundaries of overlapping fire districts upon the request of either district. The commission shall adjust the boundaries so that each district receives approximately fifty percent (50%) of the area that is within the boundaries of both districts.

History. Acts 1997, No. 1178, § 2.

A.C.R.C. Notes. References to "this subchapter" in §§ 14-284-101 to 14-284-124 may not apply to this section which was enacted subsequently.

References to "this chapter" in §§ 14-284-101—14-284-124 and subchapters 2 and 3 may not apply to this section which was enacted subsequently.

Cross References. Functions, powers, and duties of Commission, § 15-31-106.

Subchapter 2 — Fire Protection Districts Outside of Cities and Towns

SECTION.
14-284-201. Applicability.
14-284-202. Provisions supplemental.
14-284-203. Methods of establishment.
14-284-204. Establishment by adoption of ordinance.
14-284-205. Establishment by election.
14-284-206. Definition of area in petition.
14-284-207 Quorum court to establish fire protection service area — Furnishing of maps.
14-284-208. Order for establishment — Board of commissioners — Appointment — Compensation.
14-284-209. Board of commissioners — Officers and employees.
14-284-210. Board of commissioners — Proceedings — Meeting and office space.
14-284-211. Board of commissioners — Power and authority.
14-284-212. Preparation of plans — Assessors and assessments generally.
14-284-213. Assessments — Notice and hearing.
14-284-214. Assessments — Annual reassessments.
14-284-215. Assessments — Filing and collection.
14-284-216. Assessments — Time for payment — Failure to pay.
14-284-217 Expenditures — Public proceedings and transactions — Filing of report.
14-284-218. Bonds and certificates of indebtedness generally.
14-284-219. Bonds — Security — Liability of board for bonds and contracts.
14-284-220. Bonds — Refunding of obligations.
14-284-221. Bonds — Tax exemption.
14-284-222. Dissolution.
14-284-223. Authority to contract with other governmental entities to provide fire protection services.
14-284-224. Petition to annex territory to an existing district — Special election.
14-284-225. Assessment — When annexed into a municipality.

Effective Dates. Acts 1979, No. 35, § 23: Feb. 2, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that many rural areas of this State do not have the availability of fire protection services, which poses a constant threat to the life, safety, and property of thousands of families in

this State; that the passage of laws to encourage counties and/or local fire protection districts to organize their efforts to develop and operate fire protection services is necessary to encourage and make it possible for local districts to establish and operate fire protection services, and that the immediate passage of this Act is necessary to establish the legal structure for the creation of such fire protection districts and/or programs. Therefore, an emergency is hereby declared to exist, and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1991, No. 801, § 5: Mar. 26, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law pertaining to the establishment of service area for fire protection districts inappropriately also refers to nonprofit fire protection corporations; that the law should be modified to provide that the quorum court may establish the service area of fire protection districts; that this Act so provides; and that this Act should go into effect immediately in order to clarify the power of the quorum courts as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 811, § 2: on and after Dec. 31, 1993.

Acts 1995, No. 828, § 5: Mar. 29, 1995. Emergency clause provided: "It is found and determined by the General Assembly that the provisions of this act need to be invoked to prevent undue interference with the operations of fire protection districts and the fiscal operations of county and municipal governments of Arkansas. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

14-284-201. Applicability.

(a)(1) Fire protection districts established under the provisions of this subchapter shall cover only territory within the county, or within the defined district, outside the corporate limits of cities and towns.

(2) However, if any city or town within the district does not have an organized or volunteer fire department and desires to be included within the fire protection district, upon the adoption of an ordinance therefor by the governing body of the city or town, addressed to the county judge and quorum court, the area covered by the fire protection district may be extended to provide fire protection within the city limits of the city or town by ordinance adopted by the quorum court.

(b) In order to avoid duplication of fire protection services, fire protection districts established under this subchapter shall be established for the primary purpose of providing fire protection in rural areas for buildings, structures, and other man-made improvements. In addi-

tion, fire protection districts may provide other emergency services, like hazardous and toxic materials response, search and rescue services, emergency medical, ambulance, and patient transport services, and such other functions as may be assigned to or reasonably expected of a local fire services agency and which it is trained and qualified to perform. Nothing in this subchapter shall be construed to relieve the Arkansas Forestry Commission of responsibility for providing for fire protection for forest lands.

History. Acts 1979, No. 35, § 3; A.S.A. 1947, § 20-925; Acts 1997, No. 1093, § 2.

A.C.R.C. Notes. A state agency, board, commission, fund, officer, or system name in the 1997 amendment to this section is incorrect. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the reference.

Amendments. The 1997 amendment inserted the present second sentence in (b).

CASE NOTES

Purpose.

The purpose of this section is to prevent duplication of fire districts and to provide fire protection in rural areas where none exists; therefore, it excludes cities which have fire departments, regardless of whether they finance or own the department. Cox v. Commissioners of Maynard Fire Imp. Dist. No. 1, 287 Ark. 173, 697 S.W.2d 104 (1985).

14-284-202. Provisions supplemental.

The provisions of this subchapter are supplemental to any other laws and procedures for the establishment, funding, and operation of fire protection districts and shall not be construed to modify, amend, supersede, or otherwise affect other laws and procedures.

History. Acts 1979, No. 35, § 21; A.S.A. 1947, § 20-943.

14-284-203. Methods of establishment.

Fire protection districts may be established to serve all or any defined portion of any county in any of the following ways:

(1) By the quorum court by ordinance enacted after notice and public hearing;

(2) By the county court pursuant to an election of the qualified electors of the proposed district initiated, called, and conducted as provided in this subchapter; or

(3) By the county court pursuant to a resolution of a suburban improvement district, approved by unanimous vote of its board of commissioners, to convert to a fire protection district to be administered under this subchapter.

History. Acts 1979, No. 35, § 1; A.S.A. 1947, § 20-923; Acts 1997, No. 323, § 2.

Amendments. The 1997 amendment substituted "any of the following" for "either of the following" in the introductory language; added (3); and made related changes in (1) and (2).

CASE NOTES

Notice Requirement.

This section, which refers to an ordinance "enacted after notice," is general and merely introductory, but § 14-284-204, which contemplates that the passage of the ordinance should precede public notice and hearing, is specific and controls; accordingly, only the notice required in subsection (a) of § 14-284-204 is necessary prior to public hearing and no notice is required prior to enactment of the ordinance creating the district. Langford v. Brand, 274 Ark. 426, 626 S.W.2d 198 (1981).

Cited: Bailey v. Harris Brake Fire Protection Dist., 287 Ark. 268, 697 S.W.2d 916 (1985); Hannah v. Deboer, 311 Ark. 215, 843 S.W.2d 800 (1992).

14-284-204. Establishment by adoption of ordinance.

(a)(1) When an ordinance is adopted by the quorum court establishing a fire protection district, the quorum court shall publish notice of the adoption of the ordinance in a newspaper of general circulation in the county. The notice shall include a copy of the ordinance and shall prescribe a time and place for a public hearing on the ordinance.

(2) A public hearing shall be held at least thirty (30) days and not more than sixty (60) days after the date of publication of the notice.

(A) If at the hearing a majority of the qualified electors in the proposed district appear in person to oppose the establishment of the district or if petitions opposing the establishment of the district and containing the signatures of a majority of the qualified electors in the proposed district are filed at or before the public hearing, the ordinance creating the district shall be void.

(B) If a majority of the qualified electors of the proposed district do not object to the establishment of the district in person or by petition within the time prescribed in subsection (a), the ordinance shall be valid and the district shall be established. The board of commissioners for the district shall be appointed and serve, and the levy of assessed benefits to support the district may be made, in the same manner as is provided in this subchapter for fire protection districts established pursuant to a vote of the electors.

(b)(1) A fire protection district established by ordinance of the quorum court without a vote of the electors of the district shall have no authority to issue bonds and to pledge assessed benefits of the district to secure bonds unless the question of the issuance of bonds by the district is first submitted to and approved by a majority of the qualified electors of the district voting on the issue.

(2) The question of the issuance of bonds by a fire protection district established by ordinance of the quorum court may be submitted to the electors of the district at an election called by the county court either at the request of the board of commissioners of the district or upon petition signed by ten percent (10%) of the electors of the district as determined by the number of votes cast by the electors of the district for all candidates for Governor at the last preceding general election.

History. Acts 1979, No. 35, § 2; A.S.A. 1947, § 20-924.

CASE NOTES

Notice Requirement.

Section 14-284-203, which refers to an ordinance "enacted after notice," is general and merely introductory, but this section, which contemplates that the passage of the ordinance should precede public notice and hearing, is specific and controls; accordingly, only the notice required in subsection (a) of this section is necessary prior to public hearing and no notice is required prior to enactment of the ordinance creating the district. Langford v. Brand, 274 Ark. 426, 626 S.W.2d 198 (1981).

14-284-205. Establishment by election.

(a) When petitions are filed with the county court of any county wherein the fire protection district to be established is located in a single county, or if the fire protection district is to be located in more than one county and the petitions are filed with the county courts of all counties wherein the fire protection district is to be established, and the petitions contain the signatures of ten percent (10%) or more of the qualified electors within the proposed fire protection district boundaries, as determined by the number of votes cast by the qualified electors within the proposed fire protection district boundaries for all candidates for Governor at the last preceding general election, requesting the establishment of a fire protection district in the county or a designated portion thereof and requesting that assessments be made on the property or assessments be made on the landowners or assessments be made both on the property and the landowners located in the district to finance the operation of the district, the county court, or county courts if the fire protection district is located in more than one (1) county, shall call a special election within the proposed fire protection district to determine whether a fire protection district shall be established for the area.

(b) The county court, or county courts if the proposed fire protection district is located in more than one county, shall call a special election to submit the question of the establishment and financing of a fire protection district to the electors of a proposed district. The special election shall be held within ninety (90) days after the filing of the petitions requesting the election. If the proposed fire protection district is located within more than one (1) county, the county courts shall set the date of the election on the same date and set the places of the election within the proposed fire protection district boundaries. At the election, the question of establishing and financing the district shall be placed on the ballot in substantially the following form:

"FOR the establishment of a fire protection district in ..... (county), ... (designated area), and the levy of assessed benefits on real property in the district to finance the district .... ☐

AGAINST the establishment of a fire protection district in ..... (county), ... (designated area), and the levy of assessed benefits on real property in the district to finance the district ... ☐"

History. Acts 1979, No. 35, §§ 2, 5; A.S.A. 1947, §§ 20-924, 20-927; Acts 1995, No. 766, § 1.

Amendments. The 1995 amendment rewrote this section.

CASE NOTES

Notice.

Where there was no prejudice resulting from failure to follow statutory form of notice on support petition circulated for signatures of property owners which would be affected by the creation of a Fire Protection District, election approving the district was upheld. Hannah v. Deboer, 311 Ark. 215, 843 S.W.2d 800 (1992).

14-284-206. Definition of area in petition.

Petitions filed pursuant to § 14-284-203 shall specifically define the area proposed to be included in a fire protection district and shall specify the maximum assessed benefits which may be levied against property within the district for the support of the district.

History. Acts 1979, No. 35, § 4; A.S.A. 1947, § 20-926.

14-284-207. Quorum court to establish fire protection service area — Furnishing of maps.

(a)(1) The quorum court of each county wherein is located a fire protection district formed for fire protection purposes shall establish the service area of the fire protection districts to not exceed a radius of five (5) miles from each fire station.

(2) For the purpose of this subsection, five (5) miles means a distance of five (5) miles by straight line, not road or highway miles.

(b) The quorum courts shall furnish the fire protection organizations with a map indicating their service area.

History. Acts 1985, No. 160, § 2; A.S.A. 1947, § 20-925.1; Acts 1991, No. 801, § 1; 1991, No. 958, § 1; 1991, No. 1028, § 1.

14-284-208. Order for establishment — Board of commissioners — Appointment — Compensation.

(a) If at an election a majority of the qualified electors voting on the question vote "FOR" the establishment of the proposed fire protection district and the levy of assessed benefits to support the district or if an ordinance of the quorum court establishing a district is sustained or if the board of commissioners of a suburban improvement district votes unanimously to convert to a fire protection district, the county court shall enter an order establishing the district as described in the petitions or ordinance and shall appoint five (5) qualified electors of the district as a board of commissioners for the district, unless it is otherwise provided for by law.

(1) Two (2) members of the commission shall be appointed for terms of two (2) years and three (3) members of the commission shall be appointed for terms of three (3) years.

(2) All successor members shall be appointed by the county court for terms of three (3) years.

(3) All appointments shall be subject to confirmation by the quorum court of the county.

(b) The members of the boards of commissioners of fire protection districts formed after July 3, 1989 or converted from suburban improvement districts, under this subchapter shall be elected at a public meeting called by the county court. The commissioners shall be elected by the qualified electors residing within the district.

(c) Vacancies occurring on the board because of resignation, removal, or otherwise shall be filled by the county court for the unexpired term.

(d) The members of the board shall serve without compensation but shall be entitled to actual expenses incurred in attending meetings in an amount not to exceed fifty dollars ($50.00) per month for each member of the board as authorized by the quorum court of the county.

(e) Members of the board may be removed from office by the county court for good cause shown.

(f)(1) If the district includes territory from more than one (1) county, the board of commissioners shall be composed of seven (7) members:

(2) The members of the board of commissioners of multicounty fire protection districts formed after July 3, 1995, under this subchapter, shall be residents of the fire protection district and elected at a public meeting as agreed upon by the county courts in order to establish the time of the meeting and the place of the meeting being within the district. The commissioners shall be elected by the qualified electors residing within the district.

(3) The members of the board of commissioners shall serve staggered terms.

(4) Vacancies occurring on the board due to resignation, removal, or otherwise shall be filled by the remaining board members for the unexpired term.

(5)(A)(i) Members of the board may be removed by a special election to be held within ninety (90) days after the presentation of a special election removal petition signed by ten percent (10%) of the assessed landowners or the assessed per-parcel owners, with the removal of the board member to be determined by the majority votes of the votes cast in person by the assessed landowners or the assessed per-parcel property owners.

(ii) Each assessed landowner or assessed parcel property owner shall have one (1) vote per paid assessment.

(B) The election for the removal of board members shall be held at a designated location within the fire protection district.

History. Acts 1979, No. 35, § 6; A.S.A. 1947, § 20-928; Acts 1989, No. 648, § 1, 1991, No. 350, §§ 1, 2; 1995, No. 766, § 2; 1997, No. 323, § 3.

A.C.R.C. Notes. As originally amended by Acts 1995, No. 766, § 2, subdivision (f)(3) ended: "with four (4) members of the initial board serving three (3) years and three (3) members of the initial board serving two (2) years and the term of each initial board member shall be determined by the drawing of straws with the three (3) shortest straws drawn by the initial board members determining their initial term to be two (2) years."

The 1997 amendment to this section contains punctuation and stylistic errors. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

Publisher's Notes. Acts 1991, No. 350, § 1, provided, in part, that the initial members of the board of commissioners for fire protection districts appointed pursuant to subsection (f) of this section "shall determine their terms by lot so that two (2) members have a term of one (1) year, two (2) members have a term of two (2) years and three (3) members have a term of three (3) years."

Acts 1991, No. 350, § 2, provided, in part, that the initial term of service of the additional members of the board of commissioners for fire department districts appointed pursuant to subdivision (f)(2) of this section "shall be made in such a manner that the terms of service of at least two (2) commissioners expire each year."

Amendments. The 1995 amendment substituted "from more than one (1) county" for "from two (2) counties" in (f)(1); deleted former (f)(1)(A)-(C); rewrote (f)(2); and added (f)(3)-(5).

The 1997 amendment, in (a), inserted "or if the board of commissioners of a suburban improvement district votes unanimously to convert to a fire protection district" following "a district is sustained"; added "unless it is otherwise provided for by law" to the end; and made a minor punctuation change; and inserted "or converted from suburban improvement districts" following "districts formed after July 3, 1989" in (b).

14-284-209. Board of commissioners — Officers and employees.

(a) The board shall annually choose from among its members a chairman and a secretary-treasurer. The chairman and secretary-treasurer shall furnish bonds, conditioned upon faithful performance of their duties, in the amount of five thousand dollars ($5,000) each. The cost of securing and maintaining the bonds shall be paid from funds of the district.

(b) The board may employ a director and such other employees as it deems necessary to carry out the purposes of the district. Employees of the board shall have such responsibilities and receive such compensation, if any, as may be prescribed by the board.

History. Acts 1979, No. 35, § 7; A.S.A. 1947, § 20-929.

14-284-210. Board of commissioners — Proceedings — Meeting and office space.

(a) The county in which any district is located shall cooperate with and assist the board by providing suitable office space and meeting facilities for the board and its staff if facilities and space are available.

(b) The board shall meet at least quarterly and at such other times as it may deem necessary to properly carry out its responsibilities.

(c) Meetings shall be called by the chairman or a majority of the members of the board.

(d) Three (3) members of the board shall constitute a quorum, and any substantive action of the board shall require an affirmative vote of at least three (3) members.

History. Acts 1979, No. 35, § 8; A.S.A. 1947, § 20-930.

14-284-211. Board of commissioners — Power and authority.

The board of commissioners of any district created pursuant to this subchapter shall have the power and authority to:

(1) Execute contracts and other instruments for and in behalf of the district;

(2) Cooperate with any other fire protection district, municipal fire department, or any political subdivision or agency of this state or the United States in carrying out the purposes of the district;

(3) Establish rules and regulations for the transaction of the district's business and for carrying out the purposes of the district;

(4) Make assessments of benefits against real property in the district benefited by fire protection services of the district and provide for the collection of the assessments;

(5) Issue bonds as provided in this subchapter to finance the district and its purposes. However, districts established by ordinance of the quorum court shall have no authority to issue bonds unless the question is first submitted to and approved by the electors of the district as provided in §§ 14-284-204 and 14-284-205; and

(6) Do any and all other actions necessary or desirable to enable the board to carry out its responsibilities and to accomplish the purposes of the district.

History. Acts 1979, No. 35, § 9; A.S.A. 1947, § 20-931.

14-284-212. Preparation of plans — Assessors and assessments generally.

(a) As soon as is practical after its establishment, the board shall prepare plans for providing fire protection services and for acquiring the property and equipment necessary to carry out the purposes of the district.

(b) They shall thereupon appoint three (3) assessors to assess the annual benefits which will accrue to the real property within the district from the providing of fire protection services and shall fix their compensation. The assessors shall take an oath that they will well and truly assess all annual benefits that will accrue to the protected landowners of the district by the providing of fire protection services.

(c) The assessors shall thereupon proceed to assess the annual benefits to the lands within the district and shall inscribe in a book each tract of land and extend opposite the inscription of each tract of land the

amount of annual benefits that will accrue each year to that land by reason of the services.

(d) The original assessment of benefits and any reassessment shall be advertised and equalized in the same manner as provided in this subchapter, and owners of all property whose assessment has been raised shall have the right to be heard and to appeal from the decision of the assessors, as hereinafter provided.

(e) The assessors shall place opposite each affected tract the name of the supposed owner as shown by the last county assessment, but a mistake in the name shall not void the assessment, and the assessors shall correct errors which occur in the county assessment list.

(f) The commissioners shall have the authority to fill any vacancy in the position of assessor, and the assessors shall hold office at the pleasure of the board.

(g)(1)(A) The elected board of commissioners of a fire protection district formed after July 3, 1995, under this subchapter may, as an alternative to assessing benefits, assess a flat fee per parcel of land located within the district or assess a flat fee per landowner who owns land located within the district.

(B) The elected board of commissioners of a fire protection district formed after July 3, 1995, under this subchapter, may establish a different flat fee for the classification of property as commercial property other than for residential property and a different flat fee for the classification of property as unimproved property.

(C) The elected board of commissioners may determine if a parcel of property is to be classified as commercial, residential, or unimproved property.

(D) If the elected board of commissioners of a fire protection district formed after July 3, 1995, under this subchapter, assesses the flat fee per landowner and also establishes different flat fee classifications per parcel, and if a landowner owns more than one (1) parcel of property within the fire district with different flat fee classifications, the landowner is to be annually assessed one (1) time the highest flat fee classification assessment.

(2)(A) If the elected board of commissioners of a fire protection district formed after July 3, 1995, under this subchapter, assesses an increase in the flat fee per parcel classification or an increase in the assessment per landowner or an increase in the assessment for both parcel classification and landowner, the increased assessment must be approved in an election by a majority vote of the votes cast in person by the assessed landowners or the assessed per-parcel property owners.

(B) The election called by the elected board of commissioners for an increase in the flat fee assessment shall be held within ninety (90) days after the board of commissioners' meeting that approves the assessment increase.

(C) Notice of the election must be published at least three (3) times by insertion in a newspaper of general circulation within the fire

protection district and by a public notice posted at the fire stations within the fire protection district.

(D) The election for the assessment increase shall be held at a designated location within the fire protection district.

(E) Each assessed landowner or assessed parcel property owner shall have one (1) vote per paid assessment.

History. Acts 1979, No. 35, § 10; A.S.A. 1947, § 20-932; Acts 1989, No. 648, § 2; 1995, No. 766, § 3.

Amendments. The 1995 amendment rewrote (g); and made stylistic changes.

CASE NOTES

Flat Tax.

Where the county ordinance does not provide for an assessment of benefits and a corresponding tax and instead provides a flat tax rate, the ordinance is clearly contrary to this section and must be voided. Cox v. Commissioners of Maynard Fire Imp. Dist. No. 1, 287 Ark. 173, 697 S.W.2d 104 (1985).

14-284-213. Assessments — Notice and hearing.

(a) The assessment or reassessment shall be filed with the county clerk of the county, and the secretary of the board shall thereupon give notice of its filing by publication once a week for two (2) weeks in a newspaper having a bona fide circulation in the county. This notice may be in the following form:

"Notice is hereby given that the assessment of annual benefits of ..... District Number ..... has been filed in the office of the County Clerk of ..... County, where it is open for inspection. All persons wishing to be heard on said assessment will be heard by the assessors of said district in the office of the County Clerk between the hours of 1 P.M. and 4 P.M., at ....., on the ..... day of ....., 19...."

(b) On the day named by the notice, it shall be the duty of the assessors to meet as a board of assessors at the place named to hear all complaints against the assessment or reassessment and to equalize and adjust the same. Their determination shall be final unless suit is brought in the chancery court within thirty (30) days to review it. If the board is unable to hear all complaints between the hours designated, they shall adjourn over from day to day until all parties have been heard.

History. Acts 1979, No. 35, § 11; A.S.A. 1947, § 20-933.

14-284-214. Assessments — Annual reassessments.

(a) The commissioners shall once a year order the assessors to reassess the annual benefits of protected property in the district if there have been improvements made or improvements destroyed or removed from one (1) or more tracts of land in the district, making it necessary to have the annual benefits revised.

(b)(1) Whereupon, it shall be the duty of the assessors to reassess the benefits of the district, and the annual benefits assessed may be raised or lowered as fire protection services benefiting the property change.

(2) If the commissioners determine that there have been no significant changes in improvements on the lands in the district, they may direct that assessed benefits remain the same as the benefits assessed the preceding year.

History. Acts 1979, No. 35, § 12; A.S.A. 1947, § 20-934.

14-284-215. Assessments — Filing and collection.

(a) The original benefit assessment or flat fee assessment or any reassessment shall be filed with the county clerk of each county within which the district is located, and it shall be the duty of the county clerk to extend the annual benefit assessment or flat fee assessment annually upon the tax books of each county for the property within the fire protection district as located within that county until the district is dissolved.

(b) It is the duty of the collector each year to collect the annual benefit assessment, flat fee assessment, or reassessment so extended, along with the other taxes.

(1) The collector shall deduct three percent (3%) of the assessments collected, shall retain one-half (½) thereof as his fee for collecting the benefits, and shall pay over the remaining one-half (½) of this amount to the clerk of the county, or to the appropriate county official who extended the assessment, as his fee for extending the assessments on the assessment records.

(2) The collector shall remit the remainder of the assessments collected to the secretary-treasurer of the district at the same time the collector remits tax collections to the county treasurer.

(3) Upon receipt of the assessed benefits, the secretary-treasurer of the district shall execute a receipt for the funds, deliver it to the county collector, and shall deposit the funds so received in a bank or banks that are located within the district or a bank or banks designated by the board of commissioners if no bank or banks are located within the district, with said funds to be used solely and exclusively for district purposes.

(c)(1) If there is any change in the annual assessments, a certified copy of the revised assessment shall be filed with the county clerk, who shall extend the revised assessment annually upon the tax books until a new assessment is made, which shall be extended upon the tax books

in like manner. The power to reassess and extend the assessment upon the tax books shall be a continuing power as long as the district continues to exist. It shall be the duty of the county collector to collect the taxes so extended.

(2) In lieu of filing the reassessment, the assessors may make the changes in the assessment in red ink on the assessment already on file, or the assessment record may contain many columns, at the head of which the year shall be designated, and, in the corresponding column, the new annual assessment may be shown in red ink which will indicate any increase or decrease in the original annual assessment extended. When the change is made, a red ink line shall be drawn through the figures showing the previous annual assessment extended.

History. Acts 1979, No. 35, § 13; A.S.A. 1947, § 20-935; Acts 1993, No. 811, § 1, 1995, No. 766, § 4.

Publisher's Notes. Acts 1993, No. 811, § 2 provided: "The provisions of this act shall be in effect on and after December 31, 1993."

Amendments. The 1993 amendment, in (b)(1), substituted "three percent (3%)" for "one percent (1%)" and added "or to the appropriate county official who extended the assessment".

The 1995 amendment rewrote this section.

14-284-216. Assessments — Time for payment — Failure to pay.

(a) All annual assessments extended and levied under the terms of this subchapter shall be payable at the time ad valorem taxes are payable. If any annual assessments levied by the board pursuant to this subchapter are not paid when due, the collector shall not embrace the assessments in the taxes for which the collector shall sell the lands, but the collector shall report the delinquencies to the board of commissioners, who shall add to the amount of the annual assessment a penalty of ten percent (10%).

(b) The board of commissioners shall enforce the collection by chancery proceedings in the chancery court of the county in the manner provided by §§ 14-121-426 — 14-121-432.

History. Acts 1979, No. 35, § 14; A.S.A. 1947, § 20-936; 1995, No. 766, § 5.

Amendments. The 1995 amendment substituted "assessments" for "benefits" in (a); and made stylistic changes.

14-284-217. Expenditures — Public proceedings and transactions — Filing of report.

(a) Funds of the district shall be expended only upon the order of the board and upon a voucher check signed by the chairman and secretary-treasurer of the board. Every voucher check shall state upon its face to whom it is payable, the amount, and the purpose for which it is used. All voucher checks shall be dated and shall be numbered consecutively in a record to be kept by the board of the number and amount of each.

(b) All proceedings and transactions of the board shall be a matter of public record and shall be open to the inspection of the public.

(c) The board shall file with the county clerk in January of each year a certified itemized report showing all moneys received, the date of receipt, and the source from which received. The report shall further show all moneys paid out, the date paid, to whom paid, and for what purpose during the preceding year, together with an itemized list of all delinquent taxes, showing the owner, a description of the property, the years for which taxes are delinquent, and the amount of total delinquency.

History. Acts 1979, No. 35, § 15; A.S.A. 1947, § 20-937.

14-284-218. Bonds and certificates of indebtedness generally.

(a) The board of any fire protection district established pursuant to a vote of the electors as authorized in this subchapter, and the board of any fire protection district established by ordinance of the quorum court when so authorized by a vote of electors in the district as authorized in this subchapter, and the board of fire protection district converted from a suburban improvement district shall have the authority to issue negotiable bonds or certificates of indebtedness to secure funds for the expenses of the district, including office supplies and salaries and the purchase of land, buildings, equipment, facilities, chemicals, and such other items as may be necessary to carry out the purposes of the district.

(1) Bonds issued by the board shall be for a term of not more than twenty (20) years.

(2) To secure the bonds, the board may pledge all or a portion of the benefits assessed against benefited real property in the district.

(b) Bonds of the district shall be authorized by resolution of the board and may be coupon bonds, payable to bearer, or may be registrable as to principal only or as to principal and interest, and may be made exchangeable for bonds of another denomination, may be in such form and denomination, may have such date or dates, may be stated to mature at such times, may bear interest payable at such times and at such rate or rates, may be payable at such places within or without the State of Arkansas, may be made subject to such terms of redemption in advance of maturity at such prices, and may contain such terms and conditions, all as the board shall determine. The bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to provisions as to registration, as set forth above.

(c)(1) The authorizing resolution may contain any of the terms, covenants, and conditions that are deemed desirable by the board, including, without limitation, those pertaining to the maintenance of various funds and reserves, the nature and extent of the security, the issuance of additional bonds and the nature of the lien and pledge, whether parity or priority, in that event, the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the investing and reinvesting in securities specified by the board of any

moneys during periods not needed for authorized purposes, and the rights, duties, and obligations of the district, the board, and the holders and registered owners of the bonds.

(2) The authorizing resolution may provide for the execution by the district of a trust indenture with a bank or trust company within or without the State of Arkansas. The trust indenture may contain any terms, covenants, and conditions that are deemed desirable by the board, including, without limitation, those pertaining to the maintenance of various funds and reserves, the nature and extent of the security, the issuance of additional bonds and the nature of the lien and pledge, whether parity or priority, in that event, the custody and application of the proceeds of the bonds, the collection and disposition of assessments and of revenues, the investing and reinvesting, in securities specified by the board, of any moneys during periods not needed for authorized purposes, and the rights, duties, and obligations of the board and the holders and registered owners of the bonds.

(d) The bonds shall be sold at public sale on sealed bids or may be sold and negotiated in any market either at a public or private sale, as may be determined by the board.

(1) If the bonds are sold at public sale on sealed bids, notice of the sale shall be published one (1) time a week for at least two (2) consecutive weeks in a newspaper having a general circulation throughout the State of Arkansas, with the first publication to be at least twenty (20) days prior to the date of sale, and may be published in such other publications as the director may determine.

(2) The bonds may be sold at such price as the board may accept, including sale at a discount.

(3) The award, if made on sealed bids, shall be to the bidder whose bid results in the lowest net interest cost.

(e)(1) The bonds shall be executed by the manual signature of either the chairman or secretary-treasurer of the board or by the manual signature of an officer of the trustee for the bonds if the trustee certifies in writing to the authenticity of the bonds. The coupons attached to the bonds shall be executed by the facsimile signature of the chairman of the board.

(2) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of the bonds or coupons, their signatures shall, nevertheless, be valid and sufficient for all purposes.

(f) The district shall adopt and use a seal in the execution and issuance of the bonds, and each bond shall be sealed with the seal of the district.

History. Acts 1979, No. 35, § 16; 1981, No. 425, § 29; A.S.A. 1947, § 20-938; Acts 1997, No. 323, § 4.

A.C.R.C. Notes. There should be either the word "a" or "any" between "board of" and "fire protection district" in the 1997 amendment to subsection (a). Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to make the correction.

The punctuation in the 1997 amendment to this section is incorrect or does

not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

Amendments. The 1997 amendment, in (a), inserted "and the board of fire protection district converted from a suburban improvement district" preceding "shall have the authority," and made a minor punctuation change.

14-284-219. Bonds — Security — Liability of board for bonds and contracts.

(a) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter, that the bonds shall be obligations only of the district, and that in no event shall they constitute any indebtedness for which the faith and credit of the state or any county or municipality, or any of the revenues of the state or any county or municipality, are pledged.

(b) No member of the board shall be personally liable on the bonds or for any damages sustained by anyone in connection with any contracts entered into in carrying out the purposes and intent of this subchapter unless he shall have acted with corrupt intent.

(c)(1) The principal of, interest on, and paying agent's fees in connection with the bonds shall be secured by a lien on and pledge of, and shall be payable from, the assessments levied against the benefited real property within the district.

(2) The right to issue subsequent issues of bonds, if the district so determines, can be reserved in any authorizing resolution or trust indenture on either a parity or subordinate lien basis and upon such terms and conditions as the district may determine and specify in the particular authorizing resolution or trust indenture.

History. Acts 1979, No. 35, § 17; A.S.A. 1947, § 20-939.

14-284-220. Bonds — Refunding of obligations.

(a) Bonds may be issued for the purpose of refunding any bonds issued under this subchapter.

(b) Refunding bonds may be either sold or delivered in exchange for the bonds being refunded.

(c) If sold, the proceeds may be either applied to the payment of the bonds being refunded or deposited in trust and there maintained in cash or investments for the retirement of the bonds being refunded, as shall be specified by the district in the resolution or trust indenture securing the bonds.

(d) The resolution or trust indenture securing the refunding bonds may provide that the refunding bonds shall have the same priority on assessments or revenues pledged for their payment as was enjoyed by the bonds refunded.

(e) Refunding bonds shall be sold and secured in accordance with the provisions of this subchapter pertaining to the sale and security of the bonds initially issued.

History. Acts 1979, No. 35, § 18; A.S.A. 1947, § 20-940.

14-284-221. Bonds — Tax exemption.

Bonds issued under the provisions of this subchapter and the interest thereon shall be exempt from all state, county, and municipal taxes, including ad valorem, income, inheritance, and estate taxes.

History. Acts 1979, No. 35, § 19; A.S.A. 1947, § 20-941.

14-284-222. Dissolution.

(a) A fire protection district created pursuant to this subchapter may be dissolved upon a vote of a majority of qualified electors of the district, and the question of dissolution of the district may be submitted to the electors in the same manner as is prescribed in this subchapter for submitting the question of the establishment of the district.

(b) However, if any district having outstanding bonds or other indebtedness is dissolved, the assessed benefits being levied at the time of dissolution shall continue to be levied and collected until the outstanding bonds or other indebtedness are paid.

(c) No election on the question of dissolution of a fire protection district may be held within the first three (3) years after the establishment of the district.

History. Acts 1979, No. 35, § 20; A.S.A. 1947, § 20-942.

14-284-223. Authority to contract with other governmental entities to provide fire protection services.

Fire protection improvement districts or fire protection districts organized under this subchapter are authorized to contract with a city, town, or county, the state, the federal government, or an existing fire protection improvement district or fire protection district for the provision of fire protection services.

History. Acts 1983, No. 500, § 1; A.S.A. 1947, § 20-949.

14-284-224. Petition to annex territory to an existing district — Special election.

(a)(1) When petitions are filed with the board of commissioners of a fire protection district created pursuant to this subchapter containing the signatures of at least ten percent (10%) of qualified electors of a portion of the unincorporated area of the county, as determined by the number of votes cast by the qualified electors of that portion of the county for all candidates for Governor at the last preceding general election, requesting the annexation of the territory to an existing fire

protection district created under this subchapter and requesting that assessed benefits be made on the property located within the area to be annexed to help finance the operation of the district, the board of commissioners shall conduct a public hearing on the petition, and, if the board determines the annexation to be desirable, the board shall notify the quorum court, and the quorum court may at its discretion call a special election within the area of the existing fire protection district and the area proposed to be annexed to determine whether the annexation should occur.

(2) No annexation shall occur except pursuant to an election under subsection (b) of this section or by ordinance under subsection (d) of this section.

(b)(1) The special election called by the quorum court to submit the question of the annexation and financing of the fire protection district to the electors of the district and the area to be annexed shall be held within ninety (90) days after the quorum court received notification from the board of commissioners.

(2) At the election, the question of annexing the area to the district and the financing of the district shall be placed on the ballot in substantially the following form:

"FOR the annexation of.....(description of area to be annexed), and the levy of assessed benefits on real property within the area to be annexed to help finance the district ..... [ ]

AGAINST the annexation of.....(description of area to be annexed), and the levy of assessed benefits on real property within the area to be annexed to help finance the district ..... [ ]"

(c) If a majority of those voting at the election who reside within the area to be annexed, and if a majority of those voting at the election who reside within the existing district, vote in favor of the annexation, the area shall be deemed annexed and shall become a part of the fire protection district and governed accordingly.

(d)(1) As an alternative to an election on the annexation issue, if the board of commissioners of a fire protection district is in favor of the annexation, the board may refer the petitions to the county quorum court who may then accomplish the annexation by enactment of a county ordinance providing therefor.

(2) Provided, however, that the ordinance shall not go into effect until sixty (60) days after its enactment; during which time, if petitions calling for a referendum on the ordinance are presented to the quorum court and the petitions are signed by the number prescribed in subsection (a) of this section, the quorum court shall call a special election on the issue of the annexation and such election shall be conducted as prescribed in subsection (b) of this section; and unless at least a majority of those voting at the election who reside within the area to be annexed and a majority of those voting at the election who reside within the existing district vote in favor of the annexation, the annexation shall not occur.

(3) If the petitions are filed within sixty (60) days after enacting the ordinance, the ordinance shall not go into effect until and unless the annexation is approved at the election provided for herein.

(e) An attempt at annexation under this section, whether successful or not, shall in no way reduce the bonding authority of the fire protection district, nor shall the failure of the attempt at annexation have any effect on the existing fire protection district.

(f) No area shall be annexed under this section if it is located within the service area of another fire protection district or a nonprofit fire protection corporation.

History. Acts 1991, No. 1028, § 2.

14-284-225. Assessment — When annexed into a municipality.

No property located within the bounds of a municipality shall be assessed, taxed, or required to pay fees to any fire protection district after March 29, 1995, unless:

(1) There is a mutual, formal agreement between the municipality and the fire protection district to provide fire protection services to the property; or

(2) Bonded indebtedness for fire protection equipment or facilities was incurred by the fire protection district prior to the date of annexation of such property and the indebtedness incurred before annexation has not been retired.

History. Acts 1995, No. 828, § 1.

Subchapter 3 — Rural Fire Protection Service

SECTION.
14-284-301. Definition.
14-284-302. Applicability.
14-284-303. Establishment.
14-284-304. Powers and duties.
14-284-305. Rural Fire Protection Revolving Fund generally.
14-284-306. Acquisition and renovation of equipment.
14-284-307. Loans for purchase of vehicles and equipment.

Effective Dates. Acts 1979, No. 36, § 7: Feb. 2, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that large areas of this State are without fire protection and this poses a constant threat and peril to the property, lives, and safety of thousands of citizens of this State who live in rural areas or small cities and towns which are without adequate fire protection, and that the immediate passage of this Act is necessary to establish a program whereby the State Forestry Department may establish a Rural Fire Protection Service and provide leadership for the establishment of fire protection services in rural areas and small cities and towns which do not have full-time organized fire departments, and to implement a program of converting surplus vehicles into firefighting equipment to be made available to said communities, and to make loan funds available to assist said communities in obtaining the necessary firefighting equipment, and that the immediate passage of this Act is necessary to accomplish said purposes and to protect and preserve the lives, safety, and property of citizens of this State. Therefore, an emergency is hereby declared to exist, and

this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

14-284-301. Definition.

As used in this subchapter, unless the context otherwise requires, the term "rural fire protection district" shall include any city or town which does not have a full-time organized fire department or in which seventy-five percent (75%) or more of the fire fighters employed by the fire department are volunteer fire fighters.

History. Acts 1979, No. 36, § 1, A.S.A. 1947, § 20-944.

14-284-302. Applicability.

The benefits of the provisions of this subchapter shall be available to rural fire protection districts and services operated not-for-profit providing fire protection services to property owners in areas outside the limits of incorporated cities or towns and to areas partially or totally within the boundaries of cities or incorporated towns in this state which do not have a full-time organized fire department or in which seventy-five percent (75%) or more of the fire fighters employed by the fire department are volunteer fire fighters.

History. Acts 1979, No. 36, § 1; A.S.A. 1947, § 20-944.

14-284-303. Establishment.

(a) There is established within the Arkansas Forestry Commission a Rural Fire Protection Service, which shall be assigned to separate divisional status or as a program or section within an existing division of the Arkansas Forestry Commission, as determined by the Arkansas Forestry Commission.

(b) The Arkansas Forestry Commission shall provide, through the Rural Fire Protection Service, a program designed to encourage and aid localities in the establishment, development, and operation of fire protection districts and programs in rural areas which do not have available the benefits of an organized or voluntary fire fighting service and to assist existing organized or volunteer fire fighting services.

History. Acts 1979, No. 36, § 1; A.S.A. 1947, § 20-944.

14-284-304. Powers and duties.

The Rural Fire Protection Service of the Arkansas Forestry Commission shall have the following powers, functions, and duties to be performed under appropriate policies, rules, and regulations promulgated by the Arkansas Forestry Commission:

(1) To develop rural fire protection plans for the providing of fire protection services in the various rural areas of this state which do not have available the benefits or services of an organized or voluntary fire fighting program, and to assist existing organized or volunteer fire fighting services;

(2) To encourage the establishment of rural fire protection districts and to promulgate reasonable and necessary rules and regulations that rural communities must meet in order to become eligible to secure fire fighting vehicles and equipment through the Arkansas Forestry Commission;

(3) To cooperate with and assist the Arkansas Fire Training Academy in developing training programs designed to instruct and train fire fighters employed or used by rural fire protection districts in the suppression of fires, and to especially establish training programs designed to prepare rural fire fighters in the methods of handling fire fighting problems encountered in rural areas;

(4) To provide leadership and to cooperate with the Office of Emergency Services of this state, the State Fire Marshal's office, and the Arkansas Fire Training Academy, in coordinating the efforts of these agencies with the efforts and services of rural fire protection districts, for the purpose of coordinating and making maximum use of the services and resources of this state in providing rural fire protection services in this state;

(5) To establish a program to obtain by acquisition, donation, transfer, loan, or purchase, vehicles and other properties, which are suitable for repair, refurbishing, and renovation, to be used as fire trucks or other fire fighting equipment, and to acquire the necessary tanks, pumps, water hoses, and other equipment to convert and adapt the equipment for fire fighting purposes, and to make the equipment available to rural fire protection districts, under appropriate rules and regulations and eligibility standards promulgated by the Arkansas Forestry Commission, to be used by rural fire protection districts in the suppression of fires;

(6) To provide technical assistance and guidance to rural fire protection districts, to cooperate with and assist persons interested in the creation of the districts in the collection of data and providing other resources or technical assistance to aid rural property owners in efforts to establish rural fire protection services, and to provide technical advice and assistance to rural fire protection districts to enable the districts to obtain and operate the necessary equipment and training and operating procedures to function efficiently as a rural fire protection district;

(7) To contract with the Department of Correction for providing mechanical, painting, body work, or other repair services relative to the conversion, painting, and adaptation of vehicles being converted into fire protection vehicles, and to reimburse the Department of Correction for the cost of the services;

(8) To promulgate appropriate rules, regulations, and forms for the administration of the Rural Fire Protection Revolving Fund, which shall consist of moneys made available for it to be used by the Arkansas Forestry Commission in defraying the initial cost of equipment, repair, furnishing, and adaptation of vehicles as fire trucks, or other fire fighting equipment, with the cost to be reimbursed to the Arkansas Forestry Commission upon the vehicle being made available to a rural fire protection district or similar rural fire fighting agency which operates not for profit, and, in addition, to make loans, as provided in this subchapter, to rural fire protection districts to provide a portion of the moneys required to enable the districts to acquire vehicles and equipment from the Arkansas Forestry Commission; and

(9) To perform such other functions and duties which may be necessary to enable the Arkansas Forestry Commission to provide a program of comprehensive services to encourage the development and availability of rural fire protection services throughout this state.

History. Acts 1979, No. 36, § 2; A.S.A. 1947, § 20-945; Acts 1993, No. 1095, § 1.

Amendments. The 1993 amendment substituted "Arkansas Fire Training Academy" for "State Fire Training Academy" in (3) and (4); substituted "by acquisition, donation, transfer, loan, or purchase" for "federal surplus" in (5); deleted "surplus" following "and adaptation of" in (7) and (8); and made other minor changes.

14-284-305. Rural Fire Protection Revolving Fund generally.

(a) There is created and established on the books of the Treasurer of State, the Auditor of State, and the Department of Finance and Administration the "Rural Fire Protection Revolving Fund", into which shall be transferred or deposited the moneys to be provided by law for the fund, to be used as a revolving fund by the Arkansas Forestry Commission for:

(1) The acquisition by the Arkansas Forestry Commission of vehicles and for the payment of charges for labor, equipment, and materials necessary to convert the vehicles into fire fighting vehicles suitable for rural fire protection service, and to make reimbursement to the fund upon making the vehicles available to rural fire protection districts, as provided by law; and

(2) Making loans to rural fire protection districts which apply therefor and which are qualified under rules and regulations promulgated by the Arkansas Forestry Commission as qualified rural fire protection districts.

(A) The loans shall be used by qualified rural fire protection districts to provide moneys required to pay not more than seventy-five percent (75%) of the cost of acquiring, repairing, renovating, or

equipping fire fighting vehicles which have been converted and adapted by the Arkansas Forestry Commission for rural fire protection use.

(B) However, the moneys loaned to a rural fire protection district from the Rural Fire Protection Revolving Fund shall be used exclusively to defray a portion of the cost of acquiring the fire fighting equipment from the Arkansas Forestry Commission.

(C) The Arkansas Forestry Commission may establish a reasonable rate of interest to be charged on loans made from the revolving fund.

(b) All revenues received by the Arkansas Forestry Commission from the furnishing of fire fighting vehicles or equipment to rural fire protection districts, or to other eligible nonprofit organizations which are eligible to purchase the equipment from the Arkansas Forestry Commission, and all moneys received by the Arkansas Forestry Commission upon repayment of loans made from the Rural Fire Protection Revolving Fund shall be deposited in the State Treasury as nonrevenue receipts and shall be credited by the State Treasurer to the rural Fire Protection Revolving Fund, to be used for the purposes of the fund as set forth by law.

History. Acts 1979, No. 36, § 4; A.S.A. 1947, § 20-947; Acts 1993, No. 1095, § 2.

Amendments. The 1993 amendment, in (a)(1), deleted "surplus" following "Arkansas Forestry Commission of" and deleted "surplus" following "necessary to convert the"; added "acquiring" in (a)(2)(A); and made minor punctuation changes.

14-284-306. Acquisition and renovation of equipment.

(a) The Arkansas Forestry Commission may provide through existing facilities, or such expanded facilities as may be required therefor, a program of acquisition of vehicles which are suitable for conversion to fire fighting equipment, and may repair, refinish, and equip the vehicles for use as fire fighting equipment, including the acquisition and furnishing of tanks, pumps, hoses, and other equipment necessary for fire fighting purposes, and, upon renovation thereof, may make them available to a rural fire protection district or other rural fire protection district or service which operates not for profit, and recover the cost of acquisition and repair or refurbishing of the vehicle, plus a nominal charge to cover departmental overhead for the services performed.

(b) All moneys acquired from the recovery of the cost of the fire fighting equipment by the Arkansas Forestry Commission shall be deposited as nonrevenue receipts in the Rural Fire Protection Revolving Fund in the State Treasury.

History. Acts 1979, No. 36, § 3; A.S.A. 1947, § 20-946; Acts 1993, No. 1095, § 3.

Amendments. The 1993 amendment deleted "surplus" following "a program of acquisition of" in (a); and made other minor changes.

14-284-307. Loans for purchase of vehicles and equipment.

(a) Rural fire protection districts organized under the laws of this state which operate not-for-profit or any other rural fire protection agency, service, or program which provides rural fire protection to its members or to the public not-for-profit shall be eligible to purchase fire fighting vehicles and equipment from the Arkansas Forestry Commission, if the vehicles and equipment are available, to be used for rural fire protection services.

(b) The Arkansas Forestry Commission may make loans to eligible rural fire protection districts and other qualified districts, services, or programs which provide fire protection to rural areas not-for-profit, who may apply to the Arkansas Forestry Commission, upon forms and in accordance with rules and regulations promulgated by the Arkansas Forestry Commission, for loans not to exceed seventy-five percent (75%) of the cost of acquiring rural fire protection vehicles or equipment.

(c) The loans shall be for such period as may be approved by regulation of the Arkansas Forestry Commission, and in no event may any loan be for more than three (3) years.

(d) The Arkansas Forestry Commission is authorized to establish a system of priorities for determining eligibility for the acquisition of fire fighting vehicles renovated by the department which are available for sale to rural fire protection districts and may also establish a system of priorities for eligibility for loans from the Rural Fire Protection Revolving Fund for a portion of the moneys needed to acquire the vehicles by rural fire protection districts.

History. Acts 1979, No. 36, § 5; A.S.A. 1947, § 20-948; Acts 1993, No. 1095, § 4.

Amendments. The 1993 amendment substituted "three (3)" for "two (2)" in (c).

Subchapter 4 — Insurance Premium Taxes

SECTION.
14-284-401. Legislative findings.
14-284-402. Construction.
14-284-403. Apportionment of funds.
14-284-404. Use of funds to defray training expenses and for purchase and improvement of equipment.
14-284-405. Payment to rural volunteer fire departments.
14-284-406. Areas with no rural volunteer fire department or fire protection district.
14-284-407 Fire protection services organization of volunteer fire department or district after January 1, 1992.
14-284-408. Direct contributions — Provision of water.
14-284-409. Maintenance of real property of rural volunteer fire department.
14-284-410. Certification of fire department required.
14-284-411. Mayor — When member of county intergovernmental cooperation council.

A.C.R.C. Notes. References to "this subchapter" in §§ 14-284-401 — 14-284-409 and 14-284-411 may not apply to § 14-284-410 which was enacted subsequently.

Effective Dates. Acts 1992 (1st Ex.

Sess.), No. 10, § 14: Mar. 4, 1992. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, meeting in First Extraordinary Session, that an appropriation to the Department of Finance and Administration is necessary in order to disburse funds collected after January 1, 1992, under the provisions of Arkansas Code §§ 14-284-401 et seq. and § 26-57-614, and that the creation of the Fire Protection Premium Tax Fund will allow those monies to be disbursed for the provision of adequate fire protection services in the most efficient manner. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Cross References. Dues for volunteer fire departments, § 14-20-108.

14-284-401. Legislative findings.

It is hereby found and determined by the General Assembly of the State of Arkansas that additional funding is needed to improve the fire protection services in this state. It is further found and determined that the public policy of this state is to provide adequate fire protection services for property of citizens through the use of properly trained and equipped fire fighters, and that the provisions of § 26-57-614 and this subchapter, are necessary in furtherance of the public health and safety.

History. Acts 1991, No. 833, § 1.

Publisher's Notes. Acts 1991, No. 833, § 1 is also codified as § 26-57-614(a).

14-284-402. Construction.

The provisions of § 26-57-614 and this subchapter are intended to be supplemental to current provisions of Arkansas law, and shall not be construed as repealing or superseding any other laws applicable thereto.

History. Acts 1991, No. 833, § 8.

Publisher's Notes. Acts 1991, No. 833, § 8 is also codified as § 26-57-614(f).

14-284-403. Apportionment of funds.

(a)(1) These premium tax moneys are assessed for disbursement from the Fire Protection Premium Tax Fund by the Department of Finance and Administration to the counties in the following percentages:

Arkansas County — 0.78%, Ashley County — 1.39%, Baxter County — 1.78%, Benton County — 3.86%, Boone County — 1.46%, Bradley County — 0.52%, Calhoun County — 0.51%, Carroll County — 0.97%, Chicot County — 0.51%, Clark County — 1.13%, Clay County — 1.10%, Cleburne County — 1.11%, Cleveland County — 0.66%, Columbia County — 1.24%, Conway County — 1.04%, Craighead County — 2.91%, Crawford County — 1.98%, Crittenden County — 1.32%, Cross County — 0.84%, Dallas County — 0.45%, Desha County — 0.71%,

Drew County — 0.80%, Faulkner County — 2.30%, Franklin County — 0.97%, Fulton County — 0.84%, Garland County — 3.12%, Grant County — 1.13%, Greene County — 1.39%, Hempstead County — 1.89%, Hot Spring County — 1.46%, Howard County — 0.75%, Independence County — 1.90%, Izard County — 0.91%, Jackson County — 0.95%, Jefferson County — 2.32%, Johnson County — 1.05%, Lafayette County — 0.71%, Lawrence County — 0.96%, Lee County — 0.73%, Lincoln County — 1.12%, Little River County — 0.77%, Logan County — 1.06%, Lonoke County — 1.70%, Madison County — 0.95%, Marion County — 1.00%, Miller County — 1.44%, Mississippi County — 1.77%, Monroe County — 0.53%, Montgomery County — 0.66%, Nevada County — 0.58%, Newton County — 0.67%, Ouachita County — 1.37%, Perry County — 0.62%, Phillips County — 1.12%, Pike County — 0.87%, Poinsett County — 1.14%, Polk County — 1.01%, Pope County — 1.73%, Prairie County — 0.83%, Pulaski County — 5.99%, Randolph County — 0.96%, St. Francis County — 1.45%, Saline County — 3.00%, Scott County — 0.59%, Searcy County — 0.73%, Sebastian County — 2.06%, Sevier County — 0.82%, Sharp County — 1.30%, Stone County — 0.77%, Union County — 2.01%, Van Buren County — 1.18%, Washington County — 3.46%, White County — 2.71%, Woodruff County — 0.47%, Yell County — 1.11%.

(2) The moneys shall be apportioned by each quorum court to the districts and municipalities within the county based upon population unless the County Intergovernmental Cooperation Council notifies the quorum court of the fire protection needs of the districts and municipalities, in which case the moneys shall be apportioned by the quorum court based on those needs. Such funds shall be distributed to municipalities and those certified departments in districts which are in compliance with this subchapter and §§ 20-22-801 — 20-22-809. Fire departments which are not certified by the Office of Fire Protection Services pursuant to §§ 20-22-801 — 20-22-809 shall also be eligible to receive moneys disbursed under this section so long as all moneys received or spent directly on equipment, training, capital improvements, or other expenditures necessary for upgrading the service provided by the department.

(b) Disbursements shall be made on forms prescribed by the Department of Finance and Administration.

History. Acts 1991, No. 833, § 3; 1992 (1st Ex. Sess.), No. 10, § 4.

Amendments. The 1992 (1st Ex. Sess.) amendment substituted "Fire Protection Premium Tax Fund" for "Rural Fire Protection Revolving Fund" in the introductory language of (a)(1); and added the last sentence in (a)(2).

14-284-404. Use of funds to defray training expenses and for purchase and improvement of equipment.

(a)(1) Such funds shall be used to defray training expenses of fire fighters at the Arkansas Fire Training Academy and fire training centers certified by the Arkansas Fire Protection Services Board, for the purchase and improvement of, or for pledging as security for a period of not more than ten (10) years in the financing of the purchase and improvement of, fire fighting equipment and initial capital construction or improvements of fire departments.

(2) Municipalities, fire departments, and districts must expend or allocate for expenditure all funds received under the provisions of this subchapter on or before the expiration of twelve (12) months from the date of receipt.

(3) Any excess or surplus funds which are not expended or allocated for expenditure within such twelve-month period shall be remitted to the fund no later than sixty (60) days following the expiration of such twelve-month period.

(b) Such equipment shall be used by the municipalities and departments located in fire protection districts which have been duly formed or established under the provisions of § 14-284-201 et seq.

History. Acts 1991, No. 833, § 3.

14-284-405. Payment to rural volunteer fire departments.

(a) No rural volunteer fire department or district shall receive payments or disbursements from the Fire Protection Premium Tax Fund unless the county quorum court and the board of commissioners of the fire protection district designate the current county fire service coordinator or designate a county fire service coordinator who shall be responsible for seeing that standard guidelines established by the Arkansas Fire Protection Services Board pursuant to § 20-22-801 et seq., are followed.

(b) No funds shall be paid to any certified rural volunteer fire department or fire protection district until a written proposal stating the following information has been approved by the quorum court and the Arkansas Fire Protection Services Board:

(1) Amount of funds requested;

(2) Purpose for which funds will be expended;

(3) Plans for training of fire fighters; and

(4) Anticipated time of completion of project.

(c)(1) Rural volunteer fire departments and fire protection districts shall supply such statistical and operational information to the Arkansas Fire Protection Services Board and quorum court as required.

(2) The quorum court of each county shall file reports on January 15 annually with the State Auditor and Department of Finance and Administration stating how such funds were expended during the preceding twelve (12) months.

(3) Each rural volunteer fire department and fire protection district which receives such funds shall file reports on December 1 annually with the quorum court stating how such funds were expended during the preceding twelve (12) months.

(4) If any quorum court, rural volunteer fire department, or fire protection district fails to make such reports, the fire department or district shall not be eligible for new or additional funds until the reports are filed.

(5) Any rural fire department or district which fails to expend funds in due compliance with the provisions of this subchapter shall not be eligible for new or additional funds from the Fire Protection Premium Tax Fund until the department or district reimburses the fund in the exact amount of those moneys improperly retained or expended.

History. Acts 1991, No. 833, § 3; 1992 (1st Ex. Sess.), No. 10, §§ 5, 6.

Amendments. The 1992 (1st Ex. Sess.) amendment substituted "Fire Protection Premium Tax Fund" for "Rural Fire Protection Revolving Fund" in (a) and (c)(5).

14-284-406. Areas with no rural volunteer fire department or fire protection district.

(a)(1) Pursuant to § 14-284-201(a)(2), in any area in any county, in which there is no rural volunteer fire department or fire protection district which qualifies for funds under the provisions of this subchapter, the quorum court is authorized, in its discretion and with the approval of the Arkansas Fire Protection Services Board to designate any unincorporated area of the county to be served by a municipal fire department, if approved by the governing authorities of such municipality.

(2) In addition to the funds the municipality is otherwise entitled to under this subchapter, the municipality serving any such designated area shall receive the funds which the rural volunteer fire department or fire protection district would have been eligible to receive, and such funds shall be used by the municipality to provide training and to purchase equipment necessary to provide fire protection in the designated unincorporated area in compliance with this subchapter.

(b) No municipality shall receive funds under this subchapter unless it is willing to provide fire protection through mutual aid agreements in areas within five (5) miles of its corporate limits. Such municipalities shall not be required to respond when, in the opinion of proper municipal authorities, municipal property or fire classification rating would be jeopardized.

History. Acts 1991, No. 833, § 3.

14-284-407. Fire protection services organization of volunteer fire department or district after January 1, 1992.

Nothing in this subchapter shall be construed to prevent the organization of a volunteer fire department or district pursuant to the provisions of Arkansas law. If such a volunteer fire department or district is organized after January 1, 1992, the Department of Finance and Administration shall distribute funds provided by § 26-57-614 and this subchapter upon due compliance by the volunteer fire department and district with the eligibility requirements of this subchapter and §§ 20-22-801 — 20-22-809.

History. Acts 1991, No. 833, § 4.

14-284-408. Direct contributions — Provision of water.

(a) Nothing in this subchapter shall be construed to prevent quorum courts and governing bodies of municipalities from contributing funds directly to any volunteer fire department or district serving such county or municipality.

(b) Nothing in this subchapter shall be construed to prevent county, municipal, or local water utilities or associations from contributing water free of charge for fire fighting and training activities to volunteer fire departments and districts.

History. Acts 1991, No. 833, §§ 5, 6.

14-284-409. Maintenance of real property of rural volunteer fire department.

The quorum court of any county is hereby authorized and empowered, in its discretion, to grade, gravel, pave, and maintain real property of a rural volunteer fire department, including roads or driveways thereof, as necessary for the effective and safe operation of such rural volunteer fire department. Any action taken by the quorum court under the authority of this section shall be specified upon the minutes of the quorum court when the work is authorized.

History. Acts 1991, No. 833, § 7.

14-284-410. Certification of fire department required.

No fire department shall receive funds under this subchapter after January 1, 1998, unless the fire department is certified by the Arkansas Fire Protection Services Board.

History. Acts 1993, No. 1208, § 1; 1995, No. 1112, § 1.

A.C.R.C. Notes. References to "this subchapter" in §§ 14-284-401 — 14-284-409 and 14-284-411 may not apply to this section which was enacted subsequently.

Amendments. The 1995 amendment substituted "January 1, 1998" for "January 1, 1996."

14-284-411. Mayor — When member of county intergovernmental cooperation council.

For the purposes of this subchapter, the mayor of any city or incorporated town whose fire protection district extends into an adjoining county shall be a member of the county intergovernmental cooperation council of the adjoining county.

History. Acts 1995, No. 1147, § 2.

A.C.R.C. Notes. Acts 1995, No. 1147, § 1, provided: "The General Assembly finds that in some instances, local fire departments have been unable to receive their share of state turn-back funds available to fire departments because county intergovernmental cooperation councils have failed to make distribution of the funds to the fire departments. Therefore, while a local fire department is required to provide services to the entire fire district, it does not have the funds to assist it in providing the services."

Cross References. County intergovernmental cooperation councils, § 14-27-101 et seq.

CHAPTER 285

MUNICIPAL RECREATION IMPROVEMENT DISTRICTS

SECTION.
14-285-101. Definition.
14-285-102. Time and manner of payment of annual installments.
14-285-103. Collection of annual installments.
14-285-104. Withdrawal.
14-285-105. Release.

14-285-101. Definition.

For the purposes of this act, "municipal recreation improvement district" means a municipal improvement district formed under Acts 1881, No. 84, as amended, or Acts 1929, No. 64, as amended, for the sole purpose of acquiring, constructing, operating, or maintaining a recreational facility.

History. Acts 1985, No. 179, § 1; A.S.A. 1947, § 20-150.

Publisher's Notes. Acts 1881, No. 84, referred to in this section, is codified as §§ 14-88-101, 14-88-202, 14-88-204, 14-88-302, 14-88-303, 14-88-305 — 14-88-308, 14-88-311, 14-88-403, 14-88-502, 14-89-201, 14-89-1001, 14-89-1002, 14-90-101, 14-90-201, 14-90-302, 14-90-403, 14-90-701, 14-90-801 — 14-90-805, 14-90-902, 14-90-903, 14-90-916, 14-90-1001 — 14-90-1003, 14-90-1005, 14-90-1006, 14-90-1101 — 14-90-1106, 14-90-1108, 14-90-1201 — 14-90-1204, 14-90-1302, 14-90-1303, 14-91-101, 14-91-104 — 14-91-107, 14-91-201, and 14-235-301 — 14-235-305.

Acts 1929, No. 64 is codified as §§ 14-88-203, 14-88-205, 14-88-207, 14-88-210, 14-88-301, 14-88-407, 14-88-504, 14-89-201, 14-90-601, 14-90-602, 14-90-701, 14-90-801, 14-90-803, 14-90-804, 14-91-101, 14-91-102, 14-91-401, and 14-91-501 — 14-91-503.

Meaning of "this act". Acts 1985, No. 179, codified as §§ 14-88-406, 14-285-101 — 14-285-103.

14-285-102. Time and manner of payment of annual installments.

(a) Payment of the annual installments of the assessments of benefits by municipal recreation improvement districts located within second class cities shall be due on the same dates as ad valorem real property taxes and the annual installments shall be collected by the county collector at the same time and in the same manner as the collection of ad valorem real property taxes.

(b) If the annual installments are delinquent at the time the realty subject to a lien for delinquent annual installments is sold for delinquent taxes, the State Land Commissioner shall recover the delinquent annual installments at the time of the sale thereby relieving the district of the requirement of instituting a civil action for foreclosure.

(c) Therefore, any questions arising regarding the interpretation of any provision of this act shall be resolved in such manner as will result in the implementation of the legislative intent expressed above.

History. Acts 1985, No. 179, § 2; A.S.A. 1947, § 20-151.

Meaning of "this act". See note to § 14-285-101.

14-285-103. Collection of annual installments.

(a) The county collector of each county wherein is located all or part of a municipal recreation improvement district formed in a second class city shall collect the annual installments of the assessment of benefits by the district and the amount shall be collected along with and at the same time as ad valorem real property taxes.

(b) The county collector shall not accept payment of ad valorem real property taxes unless accompanied by payment of annual installments of the assessments by the municipal recreation improvement districts.

(c) All municipal recreation improvement districts shall report their assessments of benefits to the county collectors at such time and in such manner as required by the county collectors.

(d) When the State Land Commissioner collects payment of delinquent annual installments of the assessments, he shall transmit the payment, less a proportionate part of the cost of collection, to the treasurer of the district.

History. Acts 1985, No. 179, § 3; A.S.A. 1947, § 20-152.

14-285-104. Withdrawal.

(a) If a municipal recreation improvement district is composed of two (2) noncontiguous areas, one (1) of which lies outside the boundaries of the municipality, then the separate area which is located outside the boundaries of the municipality may withdraw from the district if no recreational facilities have been installed in the area.

(b)(1) The area may withdraw from the district by a petition filed with the municipal clerk. The petition shall be signed by both a

majority of the landholders in the area to be removed and the owners of a majority of the land in the area.

(2) The area shall be removed from the district and the boundaries of the district revised accordingly, upon the clerk determining the sufficiency of the petition.

(c) The landowners in an area that withdraws from a municipal recreation district pursuant to this section shall continue to pay the assessments of the district until all bonds existing at the time the petition is filed are repaid.

(d) The landowners in an area that withdraws pursuant to this section shall pay all assessments made prior to the withdrawal from the district.

History. Acts 1991, No. 413, § 1.

14-285-105. Release.

(a) In a municipal recreation improvement district which is composed of two (2) noncontiguous areas, one (1) of which lies outside the boundaries of the municipality, the separate area which is located outside the boundaries of the municipality shall be deemed to be released from the municipal recreation district if the area meets the criteria of this section. The release shall become effective October 13, 1993. However, if, before the release becomes effective, a majority of the landholders in the separate area file a petition with the district seeking to remain in the district, then the area shall not be released from the district.

(b) To be eligible for release from the district, the following criteria must be met:

(1) The area lies at least one (1) mile outside the boundaries of the municipality;

(2) The municipal recreation improvement district has been in existence for at least ten (10) years; and

(3) The municipal recreation improvement district does not have recreation facilities located in the area.

(c) Upon the release of an area, any unpaid taxes assessed shall be forgiven. This section shall not be construed to require any municipal recreation improvement district to refund any taxes paid on property located in areas released from the district in accordance with this section.

History. Acts 1993, No. 394, § 1.

CHAPTER 286

FIRE ANT ABATEMENT DISTRICTS

SECTION.
14-286-101. Definiions.
14-286-102. Elections — Calling elections.
14-286-103. Elections — Time — Ballots.
14-286-104. Boards — District established — Members.

SECTION.
14-286-105. Boards — Officers — Director — Employees — Functions — Cooperation of county.
14-286-106. Boards — Annual report.
14-286-107. Boards — Plans for abatement — Appointment of assessors — Assessments.
14-286-108. Assessments — Filing — Notice — Complaints.
14-286-109. Assessments — Reassessments.
SECTION.
14-286-110. Assessments — Duties of county clerk and county collector.
14-286-111. Expenditures — Public records.
14-286-112. Bonds — Authority — Requirements generally.
14-286-113. Bonds — Limits on liability — Payment.
14-286-114. Bonds — Refunding bonds.
14-286-115. Bonds — Tax exemptions.
14-286-116. Dissolution of district.

Cross References. Fire Ant Advisory Board, § 2-16-701 et seq.

Effective Dates. Acts 1997, No. 590, § 20: Mar. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need for legislation to grant the authority to establish Red Imported Fire Ant abatement districts in certain areas of this state and to provide a procedure for financing the activities of such districts; that this act is designed to grant such authority and to prescribe the procedure therefor and to authorize such districts to issue bonds to fund the activities of the district; and that this act should be given immediate effect to enable the electors in various areas of this state to immediately take appropriate steps to establish such districts. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

14-286-101. Definitions.

For purposes of this subchapter:

(1) "Red imported fire ant" means solenopsis invicta.

(2) "Board" means the board of commissioners of each red imported fire ant abatement district.

History. Acts 1997, No. 590, § 1.

A.C.R.C. Notes. This section contains grammatical or stylistic errors. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the language.

The punctuation in this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

14-286-102. Elections — Calling elections.

(a) The county board of commissioners shall call a special election in the county, city, or designated area of the city to determine whether a red imported fire ant abatement district shall be established for the area upon the filing of petitions with the county court of any county containing the signatures of ten percent (10%) or more of the qualified electors of all or any defined part of any county, or all or any defined part of any city, as determined by the total number of votes cast for Governor at the last general election by the qualified electors of the county, city, or designated portion thereof, requesting the establishment of a red imported fire ant abatement district in the county or a designated portion of the county or in the city or designated portion of the city and requesting that assessed benefits be made on the property located in the district to finance the operation of the district.

(b) Petitions filed pursuant to subsection (a) of this section shall specifically define the area proposed to be included in the red imported fire ant abatement district and shall specify the maximum assessed benefits which may be levied against property within the district for the support of the district. In no event shall the assessed benefits in any district exceed an amount equal to one percent (1%) of the assessed valuation of real property in the district.

(c) The quorum court of the county may on its own motion enact an ordinance directing the county court to call a special election in the county, city, or designated area of the city to determine whether a red imported fire ant abatement district shall be established for the area.

History. Acts 1997, No. 590, § 2.

14-286-103. Elections — Time — Ballots.

(a) The special election called by the county court to submit the question of the establishment and financing of a red imported fire ant abatement district to the electors of the proposed district shall be held within ninety (90) days after the petitions requesting the election have been filed with the county court.

(b) At the election, the question of establishing and financing the district shall be placed on the ballot in substantially the following form:

"FOR the establishment of a Red Imported Fire Ant (Solenopsis invicta) abatement district in _____ county, _____ (city), _____ (designated area) and the establishment of assessed benefits on real property in the district in an amount not to exceed one percent (1%) of the assessed valuation of real property in the district to finance the district _____.

AGAINST the establishment of a Red Imported Fire Ant (Solenopsis invicta) abatement district in _____ county, _____ (city), _____ (designated area) and the establishment of assessed benefits on real property in the district in an amount not to exceed one percent (1%) of the assessed valuation of real property in the district to finance the district _____."

History. Acts 1997, No. 590, § 3.

A.C.R.C. Notes. This section contains grammatical or stylistic errors. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the language.

14-286-104. Boards — District established — Members.

(a) Upon approval by the voters of the red imported fire ant abatement district and the levy of assessed benefits to support the district, the county court shall enter an order establishing the district as described in the petitions and shall appoint five (5) qualified electors of the district as a board of commissioners for the district. Two (2) members of the commission shall be appointed for terms of two (2) years and three (3) members shall be appointed for terms of three (3) years.

(b) All successor members shall be appointed by the county court for terms of three (3) years.

(c) Vacancies occurring on the board for reasons other than the expiration of a term shall be filled by the county court for the unexpired term.

(d) The members of the board shall serve without compensation, but shall be entitled to actual expenses incurred in attending meetings in an amount not to exceed fifty dollars ($50.00) per day for each member of the board.

History. Acts 1997, No. 590, § 4.

14-286-105. Boards — Officers — Director — Employees — Functions — Cooperation of county.

(a)(1) The board shall annually choose from among its members a chairman and a secretary-treasurer.

(2) The chairman and secretary-treasurer shall furnish bonds conditioned upon faithful performance of their duties in the amount of five thousand dollars ($5,000) each. The cost of securing and maintaining the bonds shall be paid from funds of the district.

(b)(1) The board shall employ a director who shall have such training, experience, and qualifications as may be prescribed by the Cooperative Extension Service, and an entomologist associated with the University of Arkansas system. The board may employ such other employees as it deems necessary to carry out the purposes of the district.

(2) Employees of the board shall have such responsibilities and receive such compensation as may be prescribed by the board.

(c) The county in which any district is located shall cooperate with and assist the board by providing suitable office space and meeting facilities for the board and its staff.

(d) The board shall meet at least quarterly and at such other times as it may deem necessary to properly carry out its responsibilities.

(1) Meetings shall be called by the chairman or a majority of the members of the board.

(2) Three (3) members of the board shall constitute a quorum and any substantive action of the board shall require an affirmative vote of at least three (3) members of the board.

(e) A Cooperative Extension Services specialist involved in fire ant education and/or the county agent chairman shall serve as ex officio members of the board and shall serve without compensation. The Cooperative Extension Services specialist, the county agent or their representatives shall cooperate with and assist the board by furnishing the board with such surveys, maps, information, and advice as may be helpful to the board in carrying out its responsibilities and to assist in such other manner as may be reasonably requested by the board.

(f) The board shall be responsible for approving materials used in the red imported fire ant abatement district and shall be responsible for certifying applicators using those materials.

History. Acts 1997, No. 590, § 5.

A.C.R.C. Notes. The punctuation in this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

14-286-106. Boards — Annual report.

Any county or city creating a red imported fire ant abatement district will be responsible to the Fire Ant Advisory Board. The board of commissioners of each red imported fire ant abatement district shall submit to the Fire Ant Advisory Board an annual report of any abatement program initiated including information regarding the techniques used, their effectiveness, and any problems encountered in the program, the cost of such techniques, and moneys collected.

History. Acts 1997, No. 590, § 6.

A.C.R.C. Notes. A state agency, board, commission, fund, officer, or system name in this section is incorrect. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the reference.

The punctuation in this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

14-286-107. Boards — Plans for abatement — Appointment of assessors — Assessments.

(a) As soon as is practical after its establishment, the board shall prepare plans for providing red imported fire ant abatement services and for acquiring the property and equipment necessary to carry out the purposes of the district.

(b) The board shall thereupon appoint three (3) assessors to assess the annual benefits which will accrue to the real property within the district as a result of the red imported fire ant abatement services and shall fix their compensation.

(1) The assessors shall take an oath that they will assess all annual benefits that will accrue to the landowners of the district as a result of the red imported fire ant abatement services.

(2) The assessors shall thereupon proceed to assess the annual benefits to the lands within the district. They shall inscribe in a book each tract of land and shall extend opposite each tract of land the amount of annual benefits that will accrue each year to the land by reason of the services.

(c) The original assessment of benefits and any reassessment shall be advertised and equalized in the manner provided in this subchapter, and owners of all property whose assessments have been raised shall have the right to be heard and to appeal from the decision of the assessors, as provided in this subchapter.

(d) The assessors shall place opposite each tract the name of the owner, as shown by the last county assessment, but a mistake in the name shall not void the assessment, and the assessors shall correct errors which occur in the county or district assessment list.

(e) The commissioners shall have the authority to fill any vacancy in the position of assessor, and the assessors shall hold their office at the pleasure of the board.

History. Acts 1997, No. 590, § 7.

14-286-108. Assessments — Filing — Notice — Complaints.

(a) The assessment shall be filed with the county clerk of the county in which the property is located, and the secretary of the board shall thereupon give notice of its filing by publication one (1) time a week for two (2) weeks in a newspaper of general circulation in the county. The notice shall be in the following form:

"Notice is hereby given that the assessment of annual benefits of _____ District Number _____ has been filed in the office of the County Clerk of _____ where it is open for inspection. All persons wishing to be heard regarding the assessment will be heard by the assessors of the district in the office of the county clerk between the hours of one (1:00) p.m. and four (4:00) p.m., at _____ on the _____, 19_____."

(b) On the day named by the notice, it shall be the duty of the assessors to meet, at the place named, as a board of assessors, to hear all complaints against the assessment, and to equalize and adjust the assessments. The determination shall be final unless suit is brought in the chancery court within thirty (30) days after the original determination by the assessors. If the board is unable to hear all complaints submitted between the hours designated in this subsection, the assessors shall adjourn over from day to day until all parties have been heard.

History. Acts 1997, No. 590, § 8.

A.C.R.C. Notes. This section contains grammatical or stylistic errors. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the language.

14-286-109. Assessments — Reassessments.

(a) The commissioners shall one (1) time a year order the assessors to reassess the annual benefits of the district, provided there have been improvements made or improvements destroyed or removed from one (1) or more tracts of land in the district, making it necessary to have the annual benefits revised.

(b)(1) Whereupon, it shall be the duty of the assessors to reassess the benefits of the district, and the annual benefits assessed may be raised or lowered as conditions of the property change.

(2) However, the annual benefits extended against any piece of property shall not be increased from the annual benefits originally extended unless improvements are made to the land that will be benefited by the red imported fire ant abatement services provided by the district.

History. Acts 1997, No. 590, § 9.

14-286-110. Assessments — Duties of county clerk and county collector.

(a) The original assessment record or any reassessment record shall be filed with the county clerk, whose duty it shall be to extend the annual benefit assessment annually upon the tax books of the county until the district is dissolved.

(b) It shall then be the duty of the county collector to collect each year the annual benefit assessment extended upon the book along with the other taxes, and the taxes shall be paid over by the collector to the depository of the district at the same time the collector pays over the county funds.

(c)(1) If there is any change in the annual benefits assessed, a certified copy of the revised assessment shall be filed with the county clerk who shall extend the revised assessment annually upon the tax books until a new assessment is made, which shall be extended upon the tax books in a similar manner. The power to reassess and extend the assessment upon the tax books shall be a continuing power as long as the district continues to exist. It shall be the duty of the county collector to collect the taxes so extended.

(2) In lieu of filing the reassessment, the assessors may make the changes in the assessment in red ink on the assessment already on file, or the assessment record may contain many columns at the head of which the year shall be designated and, in the column, the new annual benefits may be shown in red ink which will indicate any increase or decrease in the original annual benefits extended. When the change is made, a red ink line shall be drawn through the figures showing the original annual benefits extended.

History. Acts 1997, No. 590, § 10.

14-286-111. Expenditures — Public records.

(a) Funds of the district shall be expended only upon the order of the board and upon a voucher check signed by the chairman and secretary/treasurer of the board.

(1) Every voucher check shall state upon its face to whom the amount is payable, and the purpose for which it is issued.

(2) All voucher checks shall be dated and shall be numbered consecutively in a record to be kept by the board of the number and amount of the check.

(b) All proceedings and transactions of the board shall be a matter of public record and shall be open to the inspection of the public.

(c) The board shall file with the county clerk in January of each year a certified itemized report showing all moneys received, the date of receipt, and the source from which received; and all moneys paid out, date paid, to whom paid, and for what purpose, during the preceding year, together with an itemized list of all delinquent assessments showing owner, description of property, years for which the assessment is delinquent, and the amount of the total delinquency.

History. Acts 1997, No. 590, § 11.

A.C.R.C. Notes. The punctuation in this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

14-286-112. Bonds — Authority — Requirements generally.

(a) The board shall have the authority to issue negotiable bonds or certificates of indebtedness to secure funds for the expenses of the district including office supplies and salaries, the purchase of equipment, facilities, chemicals, and such other items as may be necessary to carry out the purposes of the district.

(1) Bonds issued by the board shall be for a term not more than twenty (20) years and shall bear interest at a rate not to exceed the constitutional maximum.

(2) To secure the bonds, the board may pledge all or a portion of the benefit assessed against real property in the district.

(b) Bonds of the districts shall be authorized by resolution of the board and may be registrable as to principal only or as to principal and interest and may be made exchangeable for bonds of another denomination; may be in such form and denomination; may have such date or dates; may be stated to mature at such times; may bear interest payable at such times and at such rate or rates, provided that no bond may bear interest at a rate exceeding the constitutional maximum; may be payable at such places within or without the State of Arkansas; may be made subject to such terms of redemption in advance of maturity at such prices; and may contain such terms and conditions, as the board shall determine.

(1) The bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to provisions as to registration as set forth in this subchapter.

(2) The authorizing resolution may contain any of the terms, covenants and conditions that are deemed desirable by the board including, without limitation, those pertaining to the maintenance of various funds and reserves, the nature and extent of the security, the issuance of additional bonds and the nature of the lien and pledge, parity or priority, in that event, the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the investing and reinvesting in securities specified by the board of any moneys during the periods not needed for the authorized purposes, and the rights, duties, and obligations of the district, the board, and of the holders and registered owners of the bonds.

(c) The authorizing resolution may provide for the execution of a trust indenture by the district with a bank or trust company within or without the State or Arkansas. The trust indenture may contain any terms, covenants, and conditions that are deemed desirable by the board including, without limitation, those pertaining to the maintenance of various funds and reserves, the nature and extent of the security, the issuance of additional bonds and the nature of the lien and pledge, parity or priority, in that event, the custody and application of the proceeds of the bonds, the collections and disposition of assessments and of revenues, the investing and reinvesting in securities specified by the board of any moneys during the periods not needed for authorized purposes, and the rights, duties, and obligations of the board and the holders and registered owners of the bonds.

(d) The bonds shall be sold at a public sale through sealed bids.

(1) Notice of the sale shall be published one (1) time a week for at least two (2) consecutive weeks in a newspaper having a general circulation throughout the State of Arkansas, with the first publication to be at least twenty (20) days prior to the date of sale and may be published in such other publications as the district may determine.

(2) The bonds may be sold at such price as the board may accept including sale at a discount, but in no event shall any bid be accepted which results in a net interest cost, which is determined by computing the aggregate interest cost from the date to maturity at the rate or rates bid and deducting any premium or adding any amount of any discount, in excess of the interest cost computed at par for bonds bearing interest at the maximum rate prescribed by the Arkansas Constitution.

(3) The award, if made, shall be to the bidder whose bid results in the lowest net interest cost.

(e)(1) The bonds shall be executed by the manual or facsimile signature of the chairman of the board and by the manual signature of the secretary/treasurer of the board.

(2) In case any of the officers whose signature appears on the bonds shall cease to be officers before the delivery of the bonds, their signatures shall, nevertheless, be valid and sufficient for all purposes.

(f) The district shall adopt and use a seal in the execution and issuance of the bonds, and each bond shall be sealed with the seal of the district.

History. Acts 1997, No. 590, § 12.

A.C.R.C. Notes. This section contains grammatical or stylistic errors. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the language.

The format of this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the formatting.

The punctuation in this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

14-286-113. Bonds — Limits on liability — Payment.

(a)(1) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter, that the bonds shall be obligations only of the district, and that in no event shall they constitute any indebtedness for which the faith and credit of the state or any county or municipality or any of the revenues of the state or any county or municipality are pledged.

(2) No member of the board shall be personally liable on the bonds or for any damages sustained by anyone in connection with any contracts entered into in carrying out the purpose and intent of this subchapter, unless the board member has not acted as a reasonably prudent person would.

(b)(1) The principal of, interest on, and paying agent's fees in connection with the bonds shall be secured by a lien on, and pledge of, and shall be payable from the assessments levied against the real property within the district.

(2) The right to issue subsequent issues of bonds can, if the district so determines, be reserved in any authorizing resolution or trust indenture on either a parity or subordinate lien basis and upon such terms and conditions as the district may determine and specify in the particular authorizing resolution or trust indenture.

History. Acts 1997, No. 590, § 13.

14-286-114. Bonds — Refunding bonds.

(a) Bonds may be issued for the purpose of refunding any bonds issued under this subchapter.

(b) Refunding bonds may be either sold or delivered in exchange for the bonds being refunded. If sold, the proceeds may be either applied to the payment of the bonds being refunded or deposited in trust and there be maintained in cash or investments for the retirement of the bonds being refunded, as shall be specified by the district in the resolution or trust indenture securing the bonds.

(c) The resolution or trust indenture securing the refunding bonds may provide that the refunding bonds shall have the same priority on assessments or revenues pledged for their payment as possessed by the bonds refunded.

(d) Refunding bonds shall be sold and secured in accordance with the provisions of this subchapter pertaining to the sale and security bonds.

History. Acts 1997, No. 590, § 14.

14-286-115. Bonds — Tax exemptions.

Bonds issued under the provisions of this subchapter, and the interest thereon, shall be exempt from all state, county, and municipal taxes. This exemption shall include income, inheritance, and estate taxes.

History. Acts 1997, No. 590, § 15.

14-286-116. Dissolution of district.

(a) A red imported fire ant abatement district created under this subchapter may be dissolved upon a vote of a majority of the qualified electors of the district, and the question of dissolution of the district may be submitted to the electors in the same manner as is prescribed in this subchapter submitting the question of the establishment of the district.

(b) If any district having outstanding bonds or other indebtedness is dissolved, the assessed benefits being levied at the time of dissolution shall continue to be levied and collected until the outstanding bonds or their indebtedness are paid.

(c) No election on the question of dissolution of a red imported fire ant abatement district may be held within the first three (3) years after the establishment of the district.

History. Acts 1997, No. 590, § 16.

CHAPTERS 287-295

[Reserved]

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